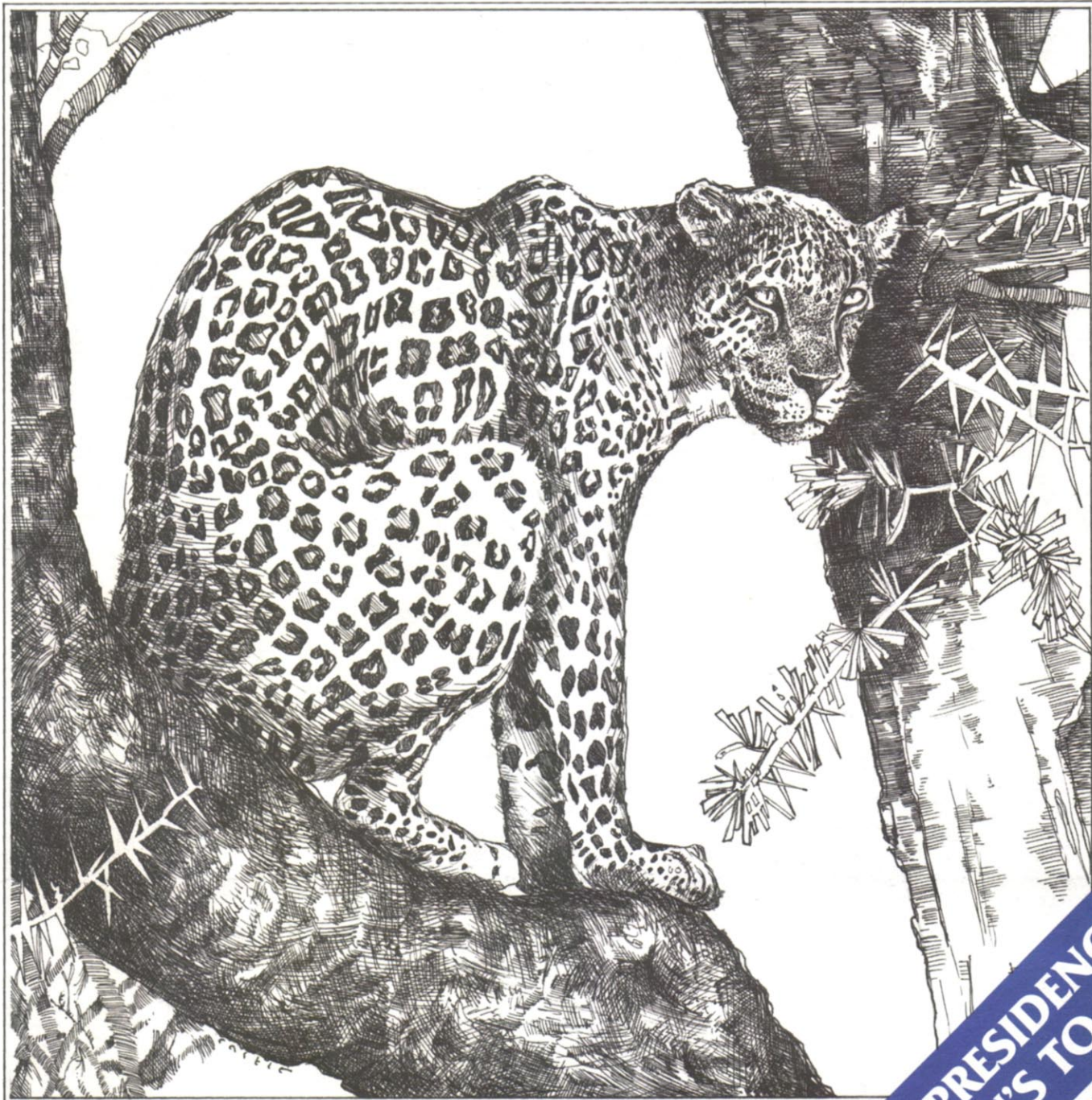


California Journal

The Monthly Analysis of State Government and Politics

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HOW HEALTHY ARE THE ZOOS OF CALIFORNIA?



THE 'PHANTOM' APPEALS COURT

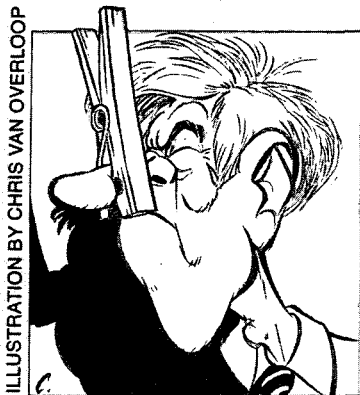
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THE PRESIDENCY:
REAGAN'S TO LOSE



Personal PERSPECTIVE

By Ed SALZMAN



The new political symbol

The plain old clothespin ought to be adopted as the official symbol for politics in California and America today. Why the clothespin? Obviously because you put it on your nose when you enter the voting booth.

How many times in recent years have Californians rushed to the polls on election day to cast enthusiastic votes for candidates they just knew would provide able leadership for state and nation? These days we are almost always presented with a choice between Tweedledum and Tweedledee. We

cast negative votes against candidates rather than positive ones for them. Jerry Brown was re-elected as governor four years ago primarily because the voters perceived Evelle Younger as a dire alternative. How many Democrats cast votes this year for Jimmy Carter or Ted Kennedy with any great sense of commitment to the candidates of their choice? Would it be possible for a John Anderson to become a significant independent force in presidential politics if the system were working well?

California's congressional delegation operates as 43 paddlers without the slightest desire to row the boat in a common direction. The state Senate has functioned without forceful leadership for years. And the Assembly is wracked by a speakership struggle based on the quest for power, not on the pursuit of ideological goals.

The American system of government has not been maintained well in recent years and needs repairs. In the selection of our leaders, ability and a proven track record are almost irrelevant these days. What counts are money-raising ability, name identification, personal charisma, clever use of television and computer-letter talent. The current presidential primary system is being pronounced a failure.

In California, voters have turned to direct democracy — the initiative process — to circumvent the Legislature and the governor. The judges get blamed for the failures of the other two branches of government. Citizens stay away from the polls because they don't think it makes much difference who gets elected.

The mythmakers in the media have proclaimed that California is the nation's headquarters for innovation. If some new fad is going to sweep the country, it is supposed to start here. The disrepair of the nation's governmental institutions poses a challenge to the state's reputation as point man for the country.

This country has been suffering from a narcissus complex; we think we have the most nearly perfect system of government in the world. We have been unwilling to experiment with other methods of selecting our government leaders, either systems in effect elsewhere or those that can be found only in books on political theory. Some state, for example, probably ought to try the parliamentary system so prevalent around the world. Why not California, the nation's laboratory?

Under the parliamentary system, the competition is as much between parties as personalities. The party is able to purge a rotten apple that happens to bob to the top of the barrel. The public gets clear choices between programs, yet knows who will head the government if one party or another wins a majority in the legislative body. The conflict between the executive and legislative branches is minimized. When an administration fails, it can be bounced out of office almost overnight.

The worst thing that could happen is that the experiment would fail. We can always go back to using clothespins.

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Wholesale changes are in the works for the state's 58 boards of supervisors. The County Supervisors Association has compiled a survey showing that between 66 and 100 new supervisors will be elected this year. There are only 296 supervisors in the state, and half of them aren't even up for election.

The end has finally come for the political aspirations of Doug Carter of Stockton. The former assemblyman has been trying every two years to win back his old seat. This time, he couldn't even win the Republican primary. "No more running for me," said Carter. "This is enough."

Don Benninghoven, head of the League of California Cities, claims that job security — not wages and fringe benefits — will be the big collective bargaining issue among local-government employees in the current decade.

After 20 years of representing the Kaiser family of companies in Sacramento, Joe Ternes is striking out on his own. Ternes was forced into early retirement when Kaiser decided it could get along without representation in Sacramento and Washington.

California legal guru Bernie Witkin of Berkeley tells prospective law students that they should go to Boalt Hall in Berkeley if they want to become good teachers and to University of Pacific's McGeorge campus in Sacramento if they want to become good lawyers.

Rumor: State GOP chairman Truman Campbell of Fresno plans to run for lieutenant governor in 1982.

Correction department: DRIP stands for Don't Re-elect Incumbent Politicians. Ed Stokes, executive director of the Public Broadcasting Commission, is spending his own money to buy a radio station in Vermont. (You might call it self-exile.) And the district of state Senator Bill Campbell is rated SAFE REPUBLICAN (not Democratic).

Attention sports fans. California, with about 11 percent of the nation's population, produced 22 percent of professional baseball players.

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This year's marathon budget fight was much ado about nothing — except the gubernatorial aspirations of one legislator.

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Born in the wake of Watergate, the political reform panel will focus on enforcement and disclosure in the 1980s.

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STRICTLY OPINION

With this column, the Journal provides a forum for those wishing to express opinions on California political issues. Inquiries about future columns are encouraged.

English spoken here

By **QUENTIN L. KOPP**



No other issue in recent memory has generated such massive response from my constituents as that prompted by the bilingual ballot matter recently under review by the San Francisco Board of Supervisors.

"I can't explain it but this thing just makes my blood boil," blurted one man who felt moved to call my office while on his morning coffee break. "It seems so unfair to expect us to pay for these ballot translations just because some people flat out refuse to learn the language of their adopted land," he continued.

This personal expression of an offended sense of justice and fair play sums up the general tenor of the phone calls and letters I've been receiving. It seems somewhat paradoxical that legislation which was initially intended to do away with injustice is now perceived as perpetuating more of its evils.

The Federal Voting Rights Act of 1965, to which the bilingual ballot requirements were added in 1975, was originally designed to remove unfair and discriminatory qualifications for voting, such as the poll tax and literacy tests that were historically used to bar southern blacks from voting. In 1975, this act was amended to include the so-called bilingual provisions. These expressly prohibited English-only elections in those jurisdictions having language minorities comprising 5 percent of the population whose literacy level fell below that of the national average or where less than 50 percent of all eligible voters voted in the previous election. Adding insult to injury were the provision's restrictions of "language minorities" to include only those languages indigenous to Asian Americans, persons of Spanish heritage, American Indians and Alaskan natives. No such protections were to be

afforded to other foreign-language citizens such as Italians, Germans, Greeks, etc.

The whole concept of singling out selected groups for special governmental treatment is one which goes against the American grain, not to say the equal protection provisions of our Constitution. And it is on constitutional grounds that the bilingual provisions can and ought to be challenged. First, they discriminate against members of other language minorities who, like those in the "protected" categories, would also find it more convenient to vote in their native language but for whom no similar opportunity is afforded. Secondly, under the terms of the act, no proof of past or present discrimination or interference with a group's voting rights is required before forcing a jurisdiction to provide special assistance. The mere existence of a selected minority language group comprising 5 percent of the population whose literacy level falls below the national norm is sufficient indication that the jurisdiction has committed some "wrongs" it needs to correct — and correct at its own expense! Thirdly, the act discriminates against English-speaking voters who, while asked to foot the bill for this special assistance, receive no such benefits in return.

In addition to these constitutional issues, many have noted that the bilingual provisions stand in open contradiction to other basic assumptions, laws and practices governing our national life. Take, for example, our naturalization laws. These specifically require a knowledge of spoken and written English be demonstrated before one becomes an American citizen. How then, can we assume that a successful candidate for citizenship lacks the needed skill to vote in English unless we also adopt the view that our citizenship tests are a mere sham or charade?

Likewise, our political campaigns and debates of ballot measures are

conducted in English. What good is served, it is asked, by translating election materials into the voter's native language if the person is unable to comprehend that discussion of issues and candidates taking place in the English-speaking campaign arena? One citizen even raises the interesting point of how, if at all, it can be determined whether these specially targeted voters are actually any more literate in their own language than in English, thereby justifying the assumption that they will actually benefit from the provision of a foreign language ballot.

The existence of these troubling questions has been ignored by Washington, although in 1978 this law was applied to 39 counties in California at a cost of over \$2 million just for printing ballots in Chinese and/or Spanish. There was no federal reimbursement for this federally mandated program. Now San Francisco has amazingly been compelled to settle a suit brought by the United States attorney which claims that not only must the city provide bilingual ballots in Chinese and Spanish, but that it must also actively recruit and solicit citizens who cannot vote in English. Requiring the registrar of voters to organize such "search and register" drives for select groups while ignoring those who speak English threatens to compromise the expected impartiality of that office and invites the excesses that characterized "ward politics." It is also a policy that furthers societal divisiveness.

I believe strongly in the preservation of this nation's cultural diversity, but I am of the equal belief that all U.S. citizens should be encouraged to speak and write the English language so as to assure them equal access to the opportunities offered by this country. Thus, I see no reason why a citizen should not be required to learn English as a requirement for voting. To require less is self-defeating and a detriment to those who have adopted the United States as their country.

Quentin Kopp is the president of the San Francisco Board of Supervisors.

The Presidency: Reagan's to lose

By ED SALZMAN

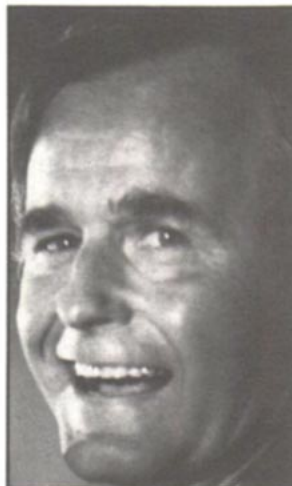
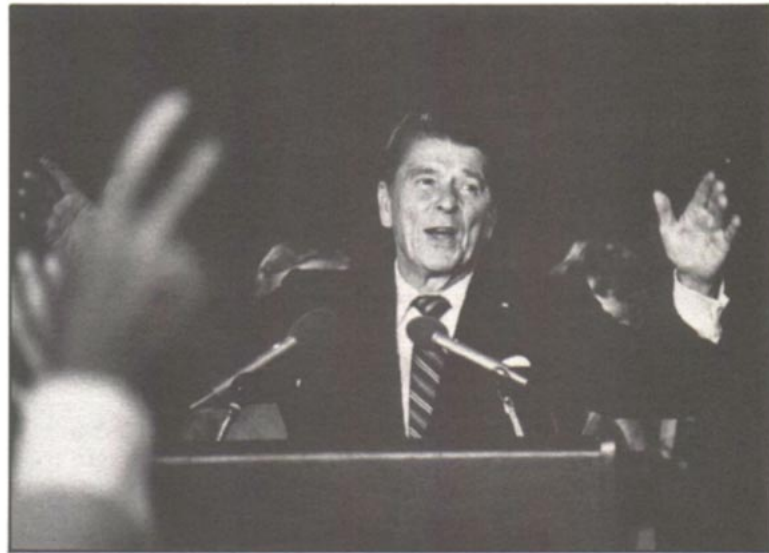
California's Ronald Wilson Reagan emerged from the Republican National Convention as the next president of the United States. So did Tom Dewey in 1948.

The Grand Old Party annointment ceremony was based on the assumption that this will be a watershed year in the history of American politics and that the Republicans are about to duplicate the feat of Franklin Delano Roosevelt and the Democrats in 1932. Reagan has proved a marvelous campaigner, even at 69. Jimmy Carter is widely viewed as an incompetent. The Republicans seem to have the issues — a sick economy and loss of national prestige around the world.

Yet, there is considerable fear among Republican strategists that this could turn out to be 1948, not 1932. That, more than anything, explains why Ronald Reagan appeared so willing to swing an unprecedented deal to put former President Gerald Ford on the ticket. If Reagan proved anything as governor for two terms, it is that he will do whatever is necessary to emerge a winner. His polls, taken by Richard Wirthlin of Decision Making Information, showed that Ford would help the most, forming the so-called "dream ticket." That's why Reagan encouraged discussions with Ford to see what it would take to get the former president to go along. Ford and Reagan are not particularly in love with one another. But Nancy and Ronald Reagan also had personal reservations about the man who finished second in Wirthlin's soundings George Bush.

At convention time, an AP-NBC poll showed Reagan far ahead of Jimmy Carter, 42-27, with John Anderson getting 18 percent of the vote. Wirthlin told Reagan that those figures can be deceptive. One reason is that the electorate is quite flexible this year. Another is that presidential elections are not run by popular vote and that there are in fact 51 different elections (the 50 states and the District of Columbia). Thus, Reagan's big lead may be distorted by his extraordinary popularity west of the Mississippi. The mathematics of the situation led Reagan to warn delegates about the 12th commandment: "Thou shalt not be overconfident."

At this point, it is difficult to pinpoint states Reagan won't carry. He is considered behind in the District of Columbia, Hawaii, southern New England, Georgia, North Carolina — and that's about it. The impact of the Anderson campaign is difficult to determine for the northeastern section of the country. One major advantage of a Reagan-Ford ticket is that Ford would have helped prevent the defection of Republicans to Anderson. Reagan can do well in the South, and Georgia GOP chairman Pat Patton feels that Carter may be the first president not to carry his own state. There should be relatively little campaigning in the West because that will be considered Reagan country — except for Texas and perhaps California, Oregon and Washington. Excluding the District of Columbia, Reagan will probably concede nothing. Assuming Anderson runs an aggressive campaign, Reagan



PHOTOGRAPHS BY TERI BOLIN

could even carry Massachusetts. That assumes that the liberal vote is split between Carter and Anderson.

Move to the middle

In the months ahead, it will probably be the hard right that will be most upset with Reagan. He is now trying to attract moderates, independents and Democrats, not conservative Republicans. Where else can the ultra conservatives go? The party platform is conservative, but Bush is a moderate and Reagan has already made it clear that it is he, not the platform, that is running for president. Much attention was given to the platform planks on the ERA and abortion, but perhaps a more significant move went relatively undetected — the Reagan shift in position on China. He is no longer a Formosa follower in the mold of the late Bill Knowland. His senior foreign affairs expert, Richard V. Allen, has told the world that Reagan does not plan to turn back the clock in terms of U.S. relations with Communist China.

Reagan is running scared because he was a cheering Democrat in 1948 when Harry Truman overtook Dewey. His chief of staff, Ed Meese, explained the fears this way: "Carter isn't much of a president, but he is a shrewd and able campaigner. He has the advantage of incumbency, which allows him to manipulate events. He is perceived as decent and honest, so people believe what he says. And there are more Democrats than Republicans."

Murray Kempton, the liberal columnist from New York, thinks Reagan is probably the best candidate seen in America since the advent of television. The main reason is that he appears open and friendly. He is eminently likeable. That, plus a united party, are two of the reasons why Republicans think this is 1932, not 1948. These are some of the other themes that will be hammered into Americans from the Reagan-Bush ticket over the coming months:

- **Pocketbook.** Jimmy Carter's economic policies are

a disaster for the working man and woman.

- **Patriotism.** "This is a crusade to make America great again."

- **Protestantism.** Fundamental Christianity is a major weapon in the Reagan arsenal this year.

- **Prestige.** America must regain its status as the credible leader of the free world.

- **Power.** Our military might has been crippled by Carter, and we need to be more than equal with the Soviet Union in defense capacity.

- **Prosperity.** America faces its biggest crisis since 1932, when it was the Democrats that rode to the rescue.

- **Polls and pundits.** The surveys show, according to Reagan, that the populace is now in step with the Republicans on the major issues of the day — the economy and foreign affairs.

With all this going for Reagan, why did he feel he needed Ford to conduct him the final mile on his trip to the White House? The regional outlook tells the story: Reagan has most of the west. Carter has an edge in the south. The election will be won and lost in the industrial northeast. Ford would be an enormous help in the northeast, if for no other reason than there would be no more questions about the presidential nature of the ticket. Ford is as presidential as they come. Reagan also will fight hard to win the Jewish vote in seven states — California, New York, Ohio, Florida, New Jersey, Pennsylvania and New York. His traditional support for Israel is the selling point. Reagan does not figure to do well among female activists because of his stand on the ERA and the fact that there are no women high in his campaign (except Nancy). But Betty and Gerald Ford would have helped.

Just a dream

To be brutally honest, the Republican convention was a total bore until the time that the "dream ticket" appeared on

New Models from Detroit

Amid all the GOP T-shirts and Reagan campaign buttons at the Republican National Convention in Detroit was an item of considerably more significance — a K-model car from Chrysler. Company representatives made it clear that if Americans don't buy enough Plymouth Reliants and Dodge Aries, the company will not get a third chance . . . Detroit, fighting valiantly to build a positive image, invited the media to a reception and then put out the lights. Not until after the propaganda messages were delivered by the mayor of Detroit and the governor of Michigan were the food stalls allowed to open . . . Ronald Reagan plans to be headquartered in Los Angeles through the end of summer, making forays to the east for speaking engagements . . . Lieutenant Governor Mike Curb was openly boosting Congressman Jack Kemp for veep. Curb also joked about his support for GOP Senate candidate Paul Gann: "I gave him a very important spot on the program." (Gann led the pledge of allegiance) . . . The California delegation was advised to steer clear of controversy, especially over



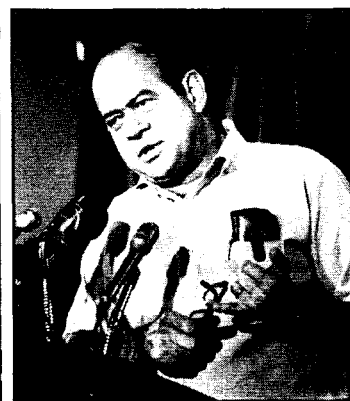
Pin-striped Wilson among the cowhands

the choice for vice president and the ERA . . . All delegation meetings except one were closed to the media . . . Gay delegates from New York and Illinois were given quite a bit of attention by San Francisco reporters . . . Mayor Pete Wilson of San Diego disdained the cowboy hat in favor of the Ivy League look . . . Attorney general George Deukmejian tried to avoid political discussions. "I'm just here to relax," he said . . . The entire convention was laid back, placing party unity ahead of anything else. There was none of the bitterness that has traditionally marked

GOP conventions . . . Perhaps the classiest party was given by Phil Hawley and Don Livingston of the Carter Hawley Hale organization . . . It turns out that the Republican high command has removed Alan Cranston from the prime Senate hit list . . . The chief architect of Ronald Reagan's acceptance speech was Peter Hannaford, longtime Reagan associate and one-time candidate for Congress from the Berkeley-Oakland area . . . The California press corps included some strange faces, including former Assemblyman Don Mulford of Berkeley and two executives from PG&E . . . Assemblyman Paul Priolo spent a good part of the evening at a delegation party at Stroh's Brewery describing the benefits of lame duckism . . . Senator S. I. Hayakawa gave the crowd ballroom dancing lessons. His partner was the singer from the country western band . . . Board of Equalization member Ernie Dronenburg of San Diego gave this response to those who asked about his possible candidacy for state controller in 1982: "It is a rumor I do not wish to discourage." *E.S.*



Guide to photos (clockwise from left): A Californian arrives in Detroit . . . Two portraits of the candidate's wife . . . No cowboy hat for Senator Hayakawa . . . Reagan spokesman Lyn Nofziger at work . . . Free outdoor concert for the host city, compliments of Pat Boone.



the horizon. Reagan wanted Ford but he apparently was not willing to pay the price. The fact that Ford and Reagan both live in California was less of a problem than it seemed. Ford said it would have been a "cheap political gimmick" for him to have moved to another state. The constitution would have allowed the state's electors to have voted for Reagan or Ford, but not both.

Ford entered into the negotiations with reservations — a gut feeling he shouldn't run, hard feelings left over from 1976, personal commitments, and others. Ford's price was a "meaningful role" in the Administration. It is significant that the chief negotiators (other than Reagan and Ford) were Henry Kissinger and economist Alan Greenspan for Ford, and Meese, campaign boss William Casey and pollster Wirthlin for Reagan. Ford wanted control over issues; Reagan wanted to maximize chances for victory.

Out of the west

According to Reagan's aides, there was discussion of Ford becoming a "super-director" over the national security council, the office of management and budget and congressional relations. In effect, Ford wanted Kissinger to run foreign affairs, Greenspan to run the economy and himself to run the White House. Reagan would be the chairman of the board making final decisions. Reagan could hardly accept anything like that. According to the Reagan camp, Ford cut off discussions on that fascinating evening at about 11:15 and said he just didn't feel in his guts that he should run. But Kissinger said he thought the package might be put together if the Reagan folks had been more patient. In any event, it was obvious that Reagan wanted to stop the Ford talk in its tracks. Word was sent to the convention hall, and Reagan

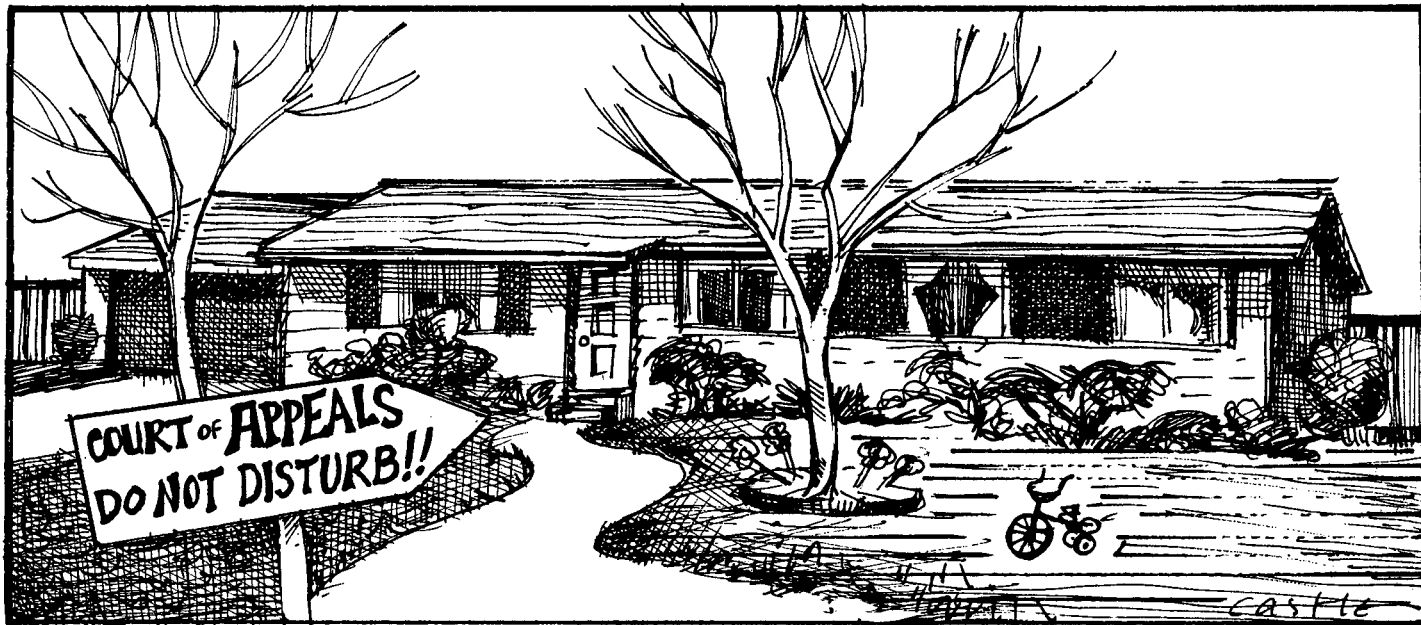
staffers immediately notified the press that Bush was the choice. California reporters were stunned. They had been working for hours gaining reaction from the cowboy-hatted California delegates.

The cowboy hat was an important symbol for California. If elected, Ronald Reagan will be the first genuine California president of modern times. Richard Nixon? He spent most of his adult life in the east and came back to the Pacific Coast primarily to campaign for election. He was definitely an easterner in outlook. Reagan is as western as his Santa Barbara ranch, his Hollywood hairstyle and the fact that he was born in Illinois. This would mean that a Reagan administration would be sympathetic for the concerns of Republicans in the West, the need for agricultural water and the support for the "Sagebrush Rebellion" against federal land policies.

It is no accident that Reagan chose to be wearing a cowboy hat for the convention theme — a white one, of course. Who best to ride to the rescue of a nation in trouble than a movie hero from the wild west? With John Wayne unavailable, why not Ronald Reagan?

But Jimmy Carter is not defenseless against the Reagan-Bush attack on his competency in office. Wouldn't his image change overnight if he were to personally travel to Iran and negotiate the release of the 52 hostages? In fact, it is a standing joke that Carter will somehow manage to get the hostages released two at a time during the month of October.

Reagan's fate probably hinges on whether Eastern voters perceive him as a moderate nice-guy in the image of the 1952 and 1956 Dwight Eisenhower or as a dangerous reactionary like the 1964 Barry Goldwater. On that perception rides the answer to the question of whether this is a 1932 or a 1948 election year.



'THERE IS A COURT OF APPEAL THAT DOESN'T REALLY EXIST'

The drive to reform California's unseen courts

By DREW R. LIEBERT

Take it from Edward Lascher of Ventura, one of the state's most respected and best-known lawyers and a specialist in appellate practice: California has a "phantom" Court of Appeal. Writing in the journal of the State Bar, Lascher asserted: "Everybody in real-life practice knows that there is a division of the Court of Appeal that doesn't really exist. Its members reside all over the state and get together every blue moon to process what's stacked up on their desks since the last reunion — to the extent the law clerks haven't done it for them, untouched by human judge."

In Southern California appellate circles, there is general agreement that the phantom court is Division 2 of the Los Angeles district. Robert Thompson, former Los Angeles district appellate justice, said the chances of finding a Division 2 justice in his office other than on oral-argument days is "next to nil." What work these justices do, he added, is accomplished in their homes, scattered from Carmel to San Diego. The presiding justice of the panel is 85-year-old Lester Roth, who refuses to talk with the press.

Laying down the law

How can a panel of appellate justices decide to become invisible? The answer comes from retired Justice Leonard Friedman of Sacramento: "The Los Angeles and San Francisco courts of appeal are characterized by what I like to call 'balkanization.' They are divided into little Ruthenias and Slavonias, each under the rule of a petty king (presiding justice) who doesn't care to communicate very much with the other kings around him." Adds Lascher: "One guy gets a case, writes about it and never talks about it to his fellow justices, whereas the whole theory of a multi-judge court is that

through it we're going to get the input of several minds."

How important is it that there is a phantom panel? Indeed, how important are the courts of appeal? Are they merely mechanical bodies churning out reams of decisions that rarely chart a new path through the legal landscape? Aren't virtually all major decisions made by the Supreme Court?

B. E. Witkin of Berkeley, generally recognized as the state's foremost legal scholar, claims it is "simply wild conceit to suggest that the bulk of the important legal decisions are made by the high court. Granted, the Supreme Court does tend to hear the famous criminal cases which involve the constitutional rights that keep the criminal class flourishing and law enforcement at bay. Nonetheless, it remains a fact that much of our criminal law and almost all of our civil law is laid down by the intermediate appellate courts." In 1978-79, the courts of appeal (which must accept all cases brought before them) decided more than 8,500 cases. The state Supreme Court, limited by its membership of seven justices, granted fewer than 200 hearings from 3,000 requests.

In any given year, the high court will handle less than 5 percent of the appellate caseload, and the courts of appeal will be the tribunal of last resort for the rest. Despite the importance of these intermediate courts, they go virtually uncovered by the state's media — the point Lascher was making when he noted the absence of public awareness of the phantom court.

Thompson says there is an obvious reason why the public does not see the work of the courts of appeal: They do not deal with the dramatic and glamorous cases. The Supreme Court is in the spotlight over issues like the constitutionality of ballot propositions and the death penalty. The trial courts bring to the public the chilling facts in criminal cases. "The intermediate courts, on the other hand," he explains, "are generally mechanics courts which review trial-court decisions and fol-

Drew R. Liebert wrote "Another coastal crisis" in the March issue.

low the legal pathways mapped out by the state Supreme Court."

Originally the California Constitution mandated that the state Supreme Court decide all issues on appeal from the municipal and superior courts. In 1904, however, due to the growing volume of litigation, three district courts of appeal were created to relieve the backlog of cases facing the Supreme Court. The First District Court of Appeal was located in San Francisco, the second in Los Angeles and the third in Sacramento. Additional districts have since been created by the Legislature in the San Bernardino/San Diego area (District Four) and in Fresno (District Five).

Dumping the divisions

In three of the five districts, the courts of appeal have undergone a further subdivision into fixed panels composed of judicial teams of from four to seven members. The San Francisco Court of Appeal consists of four divisions of four judges each; the Second District in Los Angeles has five divisions of four judges each, and District Three in Sacramento has only one division composed of seven judges. To add to the confusion, District Four consists of two divisions of four and five judges respectively, whereas the district in Fresno is composed of only one division of six justices.

In sum, there are 58 appellate justices, each earning a salary of about \$65,000 a year. Of these, 13 serve as presiding justices of their divisions — and five of them have been designated as administrative presiding justices for their districts. This organizational system is now under attack in the Legislature in the form of a bill (AB 2444) by Assembly Republican caucus chairman Charles Imbrecht, who is seeking to eliminate the divisional system in favor of the single-panel arrangement now employed in Fresno and Sacramento.

Imbrecht's main complaints involve the seeming lack of uniformity in decision-making between divisions; their varying degrees of productivity; the absence of uniform practices and procedures; and the parochial reputations that particular divisions have acquired within the legal community.

Presiding Justice Gordon Files of the Los Angeles district supports the Imbrecht proposal to break up the divisions: "The fixed division does tend to have its own personality, and the appellate lawyers take note of this fact and get the idea they're getting a different quality of justice when arguing

before one division as opposed to another." The rotational system, Files says, would remove the potential for some divisions to be — or at least to be perceived — as either particularly "tough" or "soft" on crime.

Not all of Justice Files' colleagues on the bench agree with him. Many worry that the decision-making efficiency of the districts will suffer if the divisions are abolished. "It is doubtless true that we would not get through our caseload quite as quickly if we break up the divisions," Justice Files admits. "After all, it's much easier to work with others whom you know well and have worked with for years — not because we then automatically accept each other's decisions, but simply because we've learned the most efficient ways to communicate our questions and concerns to each other. If we have to relearn the communication process through frequently changing court panels business is sure to slow down at least a little."

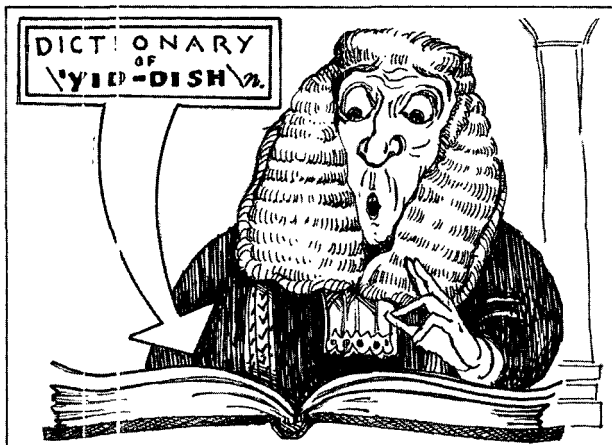
The judges of the federal Court of Appeals, after considering the merits of both systems, have chosen to organize themselves into constantly rotating panels. William Luck, circuit executive of the Ninth Circuit Federal Court of Appeals (which currently faces an 18-month to two-year backlog of cases) notes that keeping judges together in fixed divisions is potentially more efficient only if the panel members are congenial and homogeneous. "If the judges of a division do not happen to get along very well," Luck says, "the divisional system is surely less productive than the rotational alternative. So the argument in favor of permanent divisions presupposes a rather collegial trio on a panel, and I'm not so sure that's always the case with California's intermediate courts or the federal Court of Appeals."

Whose decision

The major support for the Imbrecht plan comes from the State Bar, which contends that better opinions will result from the rotational procedure. The primary opponents of the rotational system are the judge-dominated Judicial Council, the chief rule-making body of the state's judicial system, and the California Judges Association, which prescribes to the "less efficiency, more costly" argument used against the Imbrecht proposal.

Another debate within the legal community revolves around the appellate staff serving the Courts of Appeal. In

A lesson in Yiddish



On March 13, the *Los Angeles Times* noted an unusual example of judicial sniping on the Court of Appeal. The weapons were the footnotes in opinions published by the court, and the combatants were the justices themselves.

At issue was a case involving the possession of obscene

films. Justices Robert S. Thompson and Mildred Lillie held that the defendants' "reasonable expectation of privacy" had been violated. Justice L. Thaxton Hanson dissented vehemently in a 45-page opinion. In a footnote, he told his colleagues: "Here once again we are going 180 degrees in the wrong direction. It is no wonder than even though California has an obscenity law, it has the dubious distinction of being the porno capital of the world."

Thompson and Lillie responded by attaching a footnote to their majority opinion:

- "1. Some answer is required to the dissent's charge.
- "2. Certainly we do not endorse 'victimless crime.'
- "3. How that question is involved escapes us.
- "4. Moreover, the constitutional issue is significant.
- "5. Ultimately it must be addressed in light of precedent.
- "6. Certainly the course of precedent is clear.
- "7. Knowing that, our result is compelled."

The initial letters of the seven sentences spell "SCHMUCK," a Yiddish word defined by Webster as "a contemptible or foolish person; a jerk."

the past the staff was mainly young law clerks, but the appellate system now hires well-paid research attorneys who have chosen to make a career out of working for the state's intermediate courts. Critics of the relatively new system fear that the appellate staff has gradually been given too much discretion, especially in screening cases and in preparing preliminary "bench memoranda," or sample opinions, for the justices to review.

Former Justice Thompson is one member of the legal community who worries that the staff-prepared memoranda have too often become the opinions of the intermediate courts. This phenomenon, he suggests, naturally encourages both attorneys and the public to wonder who is really deciding their cases, the judges or their assistants.

B.E. Witkin does not share Thompson's concerns. In fact, he is convinced that any contention that the appellate staff is making judicial decisions is nonsense. "Whatever isolated instances of rubber-stamping that may have occurred over the years, this has never been true, and cannot be true, of modern centralized appellate staffs," Witkin says. "There simply is no scandal to be found here. The justices, not the staffs, of our Courts of Appeal are deciding the cases."

The truth probably lies somewhere in the middle. As retired Justice Friedman notes, "There always is the possibility of a judge surrendering judicial responsibility to his staff. This is just a part of our judicial system we have to live with. But we should feel confident that the great majority of our appellate judges are more than living up to their judicial oaths of office."

For incumbent appellate justices, by far the largest threat on the horizon is the move by conservatives to change their election procedures. Judges are elected to municipal and superior courts in contested elections each six years, but justices on the Supreme Court and the courts of appeal can only be chosen by the governor. The voters have an opportunity to

CLARIFICATION

In the June issue, an article on the congressional contest between incumbent Harold (Bizz) Johnson and Republican Assemblyman Eugene Chappie ascribed to Chappie a zero voting record from the Friends Committee on Legislation (FCL). The FCL does not rate legislators and publishes voting records on some issues on which the organization has no position. However, a *Journal* analysis of Chappie's voting records and FCL positions indicates that the assemblyman has often disagreed with the FCL.

throw them out of office every 12 years but not to select their successors. Under the plan sponsored by state Senators H. L. Richardson and Newton Russell, appellate justices would face contested elections. A proposed constitutional amendment by Russell has been killed in the Legislature, but Richardson's Law and Order Campaign Committee is attempting to qualify an initiative for the 1982 ballot. The plan would also subject judicial appointments by the governor to Senate confirmation.

Phillip Johnson, a Berkeley law professor, opposes contested appellate elections but says the Richardson-Russell drive reflects public frustration. "It is not at all unreasonable to feel that the current Supreme Court has so far abandoned the traditional role of a court that it has simply become a question of whose politics is being enacted — the Legislature's or the judiciary's? So it's understandable," he says, "if people are beginning to say the public should be given the choice as to which appellate judges it wants 'legislating' its pressing social issues."

Most appellate judges naturally shudder at the thought of being forced to defend their judicial "records" in the public forum. Justices Marcel Poche and Jerry Smith of the San Francisco Court of Appeals, for instance, believe that the present mechanism for the approval of appellate nominees is an adequate safeguard against the possibility of the governor sneaking an incompetent or otherwise unqualified judge onto the bench. They also share the outright fear of many of their fellow justices that opening up the appellate system to popular elections would risk placing the judges under the potential control of special-interest groups to which the judges would turn for campaign support.

"Moreover," Poché says, "what is the public really saying when it charges the judiciary with being 'soft' on crime? It is actually saying that our state and federal constitutions are 'soft on crime.' So if, through contested elections, we kick out judges who are supposedly 'soft' and replace them with those who claim they're 'tough on crime,' we'll be putting in people who no longer follow the principles of our constitution but rather follow every turn in the prevailing political winds."

J. Anthony Kline, Governor Brown's legal affairs adviser, warns the contested-election plan is "one of the most pernicious reform proposals ever to come before the Legislature." Appellate judges would be fearful of rendering politically unpopular, though constitutionally correct, decisions, Kline says, and the conflicts of interest that would arise in district or statewide elections would be "simply appalling." He worries that vote-rich Los Angeles County would acquire a stranglehold on the membership of the state Supreme Court, and that name identification "which really has nothing to do with one's ability to serve on such tribunals," would determine who wins.

Qualification of the Richardson initiative for the 1982 ballot might not even bring the courts of appeal out of the shadows and into the light of day. That's because most of the attention would be directed to the Supreme Court and specifically Chief Justice Rose Bird. And it would probably have no effect on the phantom panel in Los Angeles, because Presiding Justice Roth undoubtedly will retire at the end of his current term. ■

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Proposition 5 – a shield or the same old reporters' sieve?

By RONALD BLUBAUGH

Now that the Shield Act is part of the California Constitution, can the state's reporters stop worrying about going to jail for refusing to identify a news source? No, they can't. Reporters will be going to jail with about the same regularity as before. Despite all the pre-election editorials to the contrary, Proposition 5 was essentially a do-nothing constitutional amendment. The measure's high-sounding title, "Freedom of the Press," apparently appealed to the voters, who cast 73 percent of their ballots in favor of the legislative referendum. But it was a case of deceptive packaging.

The contents of Proposition 5 long have been part of California law as Evidence Code Section 1070. The original version of that statute has been on the books since 1935. Supporters of the proposition argued that elevating the law to constitutional status would require judges to give the protection "greater weight." Legally, however, a statute does not become a stronger law by its transformation into a section of the constitution. A law is a law, regardless of where it is written. The single significant effect of placing a statute into the constitution is to prevent the Legislature from repealing it. Only the electorate can repeal a section of the state constitution. In the case of the Shield Act, however, the press had no fear of any legislative rescission, what with 100 members of the Legislature in need of newspaper endorsements every two years.

It is the judiciary which has assaulted the Shield Act, and the basis of the assault has been a higher law, the United States Constitution. The United States Constitution is a higher law than the California Evidence Code and it is a higher law than the California Constitution. If the Shield Act had to fall before the United States Constitution when it was a statute, it will continue to fall in its transmuted form as a state constitutional provision.

A vital ability

That the Shield Act is a good idea cannot be gainsayed. The law provides that reporters, photographers and editors in both the print and electronic media shall be immune from contempt for refusing to disclose the source of information gathered for publication. It also provides immunity from contempt for refusing to disclose information which, although gathered for publication or broadcast, was not subsequently used. The law is a "shield" against the punishment of reporters who are doing their job.

The ability to use confidential sources is vital to the Amer-

ican press. A small but important part of the news which appears in the daily newspaper is based upon information from confidential sources. The bureaucrat sees something wrong in government but is powerless to correct it from within. He will give the story to a reporter only on an inviolate promise that he will not be revealed. A participant in or close observer of a crime might be willing to share his infor-



mation with a reporter, but only on the commitment that his identity will be protected. A reporter who reveals such a source not only loses that source but jeopardizes the willingness of other sources to give information on a confidential basis. If it becomes known that a source has not been protected in one situation, who is to trust the same or some other reporter in another situation? Thus, reporters who use confidential sources are dependent upon each other. A betrayal by one is a betrayal by all.

The problem with all of this is that other rights are involved. There is the right of the state to apprehend and punish criminals. There is the right of the criminal suspect to a fair trial. And there is the ancient principle of Anglo-Saxon jurisprudence that the law is entitled to every person's evidence. Insofar as news people are permitted to have confidential sources, these other rights are diminished. If a reporter does not have to reveal information about criminal conduct, a crime may go unpunished. If a reporter can keep confidential some information which may be useful in defending a person accused of a crime, an innocent man may go to jail. Other citizens in our society must reveal what they

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know. Why, many judges have asked, should reporters be different?

The first United States Supreme Court test over the confidentiality of news sources occurred in the 1972 case of *Branzburg v. Hayes*. Paul M. Branzburg had written two stories in the *Louisville Courier-Journal* about the manufacture and sale of drugs. One story described how Branzburg had observed two persons synthesize hashish from marijuana. The other discussed the use of drugs in Frankfort, Kentucky, and described numerous conversations with unidentified drug users. As a result of the stories, Branzburg was called by two separate grand juries. To one jury he refused to identify the persons he had seen making hashish. To the other he refused to divulge the names of persons who had told him about drug use in Frankfort.

In their effort to defend Branzburg and reporters in two companion cases, press lawyers developed the theory that contained within the First Amendment there is a constitutional right to gather news. According to this theory, insofar as government inhibits the right to collect information, government is abridging the freedom of speech. Denial of the right to confidential sources inhibits the collection of information and, according to the theory, thereby infringes upon First Amendment rights. The Supreme Court refused to accept the theory of a constitutional right to gather news in *Branzburg* and, until last month's decision in *Richmond Newspapers v. Virginia*, the court had refused to accept the theory in all subsequent cases.

In California, Evidence Code Section 1070 has been a partial defense against *Branzburg* and its implications. A California reporter called before a grand jury in the exact factual circumstances of *Branzburg* could expect to resist successfully. The Shield Act would provide that protection. But California reporters have had a much more difficult time when their efforts to protect a news source are inimical to the ability of a criminal defendant to obtain a fair trial.

Consider, for example, the October 23rd, 1977, broadcast of "60 Minutes." It showed the arrest of two San Jose men for the alleged sale of PCP-laced cigarettes. Although CBS televised only the actual arrest, the camera crew had secretly photographed and recorded the negotiations which preceded the arrest. The defendants, who argued entrapment, subpoenaed the film as the best evidence of what actually happened. CBS resisted, relying in part on Evidence Code Section 1070 and its protection against the subpoena of outtakes. In the 1978 case of *CBS v. Superior Court*, a California appellate court sided with the criminal defendants. Evidence Code Section 1070 was easily avoided because, in the court's view, the legislative purpose behind it was lost when the undercover agents CBS sought to protect revealed their identities at the hearing over the network's attempt to fight the subpoena. Moreover, the court concluded, any state or federal constitutional rights of CBS to keep confidential its unaired footage were secondary to the defendants' Sixth Amendment right to a fair trial.

In the 1979 case of *Hammarley v. Superior Court*, a different California appellate court reached the same result in ordering a *Sacramento Union* reporter to turn over notes and tapes made during an interview with the state's key witness in a murder trial. This time, the court concluded specifically

that Evidence Code Section 1070 would have to fall before the defendant's federal right to a fair trial. *Hammarley* is especially significant because in sidestepping an argument that the reporter had a California constitutional right to keep his notes confidential, the court observed that:

... even were the privilege of state constitutional origin, it would not thereby necessarily acquire primacy over other constitutional rights with which it comes into conflict, most particularly those involved here which derive from the United States Constitution.

These results were foreseen in the 1971 case of *Farr v. Superior Court* and the 1975 case of *Rosato v. Superior Court*. Both *Farr* and *Rosato* had obtained and published information apparently leaked in defiance of judicial gag orders. The judges in both cases determined to find out the identity of and to punish the transgressors. In both cases the trial judges were attempting to carry out the command, given by the United States Supreme Court in *Sheppard v. Maxwell*, to prevent prejudicial publicity from destroying a defendant's Sixth Amendment right to a fair trial. The use of gag orders against attorneys is specifically suggested in *Sheppard* as a method of preventing the release of prejudicial information just before or during a trial.

Virtually certain that their gag orders had been disobeyed, the trial judges in the *Farr* and *Rosato* cases sought to learn the identities of the offenders from the only persons who would know, the reporters (and editors in *Rosato*) who wrote (and edited) the stories. Evidence Code Section 1070 provided no protection in either case. Sixth Amendment rights to a fair trial were at stake and no state statute can stand against a federal constitutional right.

Placing the Shield Act in the California Constitution is not going to change the result in *Farr* and *Rosato* or *CBS* and *Hammarley*. State constitutional rights can never supersede federal constitutional rights. Proposition 5 promises more than it can deliver.

Proposition 5 is the product of a kind of hysteria among reporters, editors and publishers these days. It is a hysteria which grows out of an exaggeration about what has transpired of late in the United States Supreme Court. The Burger Court, it can be observed fairly, is no friend of the press. Newspapers and television have lost many a case in recent years before the Supreme Court. But the situation is not as bad as a casual newspaper reader might suspect. The First Amendment has not been reduced to a bowl of Jell-O.

No massive retreat

In actuality, the last decade did not see a massive judicial retreat from long-held doctrines about the First Amendment. What primarily occurred in the press-court fight of the 1970s was a judicial reluctance to recognize the new First Amendment theories espoused by the press — specifically, the right to gather news. It was not until the *Richmond Newspapers* decision last month that the court finally acknowledged any First Amendment rights to gather news. That case, which deals with the right to attend criminal trials, is a hopeful sign for the press. But it does not settle the old controversy over the confidentiality of news sources. It merely affords the press with some badly needed legal precedent in support of its position.

Into this ethereal constitutional debate comes Proposition 5. The amendment isn't going to resolve the argument over confidentiality. Judges will continue to follow the requirements of the United States Constitution as they perceive them. Only now when a reporter goes to jail, the court will be accused not only of attacking freedom of the press but also of ignoring the will of the people. It may be that judges do, indeed, read the election returns. The rub is that when it comes to federal constitutional rights, California election returns just don't have much to say.

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Political *Star Wars*: Peck versus Dornan

By TOM BOURNE

Having easily brushed aside two challengers in the June 3rd primary, Democrat Carey Peck is facing incumbent two-term Republican Robert K. Dornan for the second time in a battle for the congressional seat in the 27th District. The r previous face-off in 1978, decided by a slim 3,500-vote margin, was billed as a political *Star Wars* because of their Hollywood connections. Peck, the son of actor Gregory Peck, received financial support from the younger generation of actors while Dornan — a cousin of the late Jack Haley (the Tin Man in the *Wizard of Oz*) — got the backing of older, more conservative elements in filmdom such as Bob Hope.

Stretching along the Southern California coast from Pacific Palisades to Rolling Hills, the 27th Congressional District is composed largely of suburban communities. It also contains a north-south split. The populous northern cities such as Santa Monica and Venice have political sympathies ranging generally from liberal to radical left, but from Marina Del Rey south the district becomes decidedly more conservative. Its most famous residents — Ronald Reagan of Pacific Palisades and Tom Hayden and Jane Fonda of Ocean Park — symbolize the contrast in political views that is found in the 27th.

Peck, a 1972 graduate of the School of Foreign Service at Georgetown University, is spending seven days a week walking the precincts, much as he did two years ago, when he claims to have met more than 15,000 people. Dornan shuttles back and forth almost weekly from Washington, where he has a better than 90 percent voting record.

More than a rerun

But this year's campaign will be more than a rerun of 1978. Peck has decided to put some distance between himself and Dornan on defense spending — a crucial issue in their aerospace-heavy district. And Dornan will try to capitalize on a campaign-finance incident in 1978 that Peck says was all a mistake.

Tom Bourne is a free-lance writer based in Santa Monica.

PECK



Two years ago, Peck said there were "no significant differences" between himself and Dornan on defense. This time he is charging that Dornan wants to give *carte blanche* to the Pentagon. He characterizes the congressman's attitude as, "If you spend more money on the military, it's good." If elected, Peck says he would join those in Washington who wish to take "a cold, hard look at the military budget," particularly in view of the failed rescue mission in Iran. He says he does not favor cuts in the defense budget, but he views the prospect of large defense increases as money that would be wasted and misspent.

Dornan, a former Air Force fighter pilot, has always been a strong supporter of increased defense spending to keep up with the Russians. He opposes the draft, but he feels there must be added impetus for joining the all-volunteer army. Dornan has proposed a bill which would provide lifetime tax credits for anyone who enlists, serves from two to four years, and receives an honorable discharge upon completion of the tour of duty.

When he first went to Congress, Dornan was a vigorous advocate of the B-1 bomber — so much so, in fact, that

the national news magazines used to call him "B-1 Bob." The project, which would have brought more jobs to the 27th District than any other defense contract in history, was canceled by Carter in 1977. Dornan has been instrumental in restoring funding for this program, which is now known as the Capital Strategic Weapons Launcher.

Bracelets and contracts

On international affairs, the candidates are miles apart. "Robert Dornan is the product of the 1950s," says Peck. "He believes that America is the last bastion of Christianity, fighting the forces of godless Communism." Peck is particularly critical of the way that Dornan, as the inventor of the POW bracelet, has gone on to fashion similar bracelets for the Russian dissidents and now for the U.S. hostages to Iran. "It's basically wrong for a politician to respond to international crises with jewelry," Peck says.

Dornan insists that the bracelets are very important as symbols and have been well received not only by his constituents in the 27th, but by people all over the world. The effectiveness of the bracelets was proven, according to Dornan, when he made a trip to Moscow as part of a congressional delegation in August 1978. Sitting in the Kremlin, Dornan was asked by an interpreter why he was wearing a bracelet for Anatoly Scharansky. "Because his mother asked me to," responded Dornan, and simultaneously all 10 congressmen in the delegation held up their bracelets. "It was like a rally," he recalls. He also says that he has been thanked by two wives of the hostages for the bracelets.

Peck will try to make an issue out of the district's heavy reliance on contracts and grants. The prime employers of the 27th District are in the defense or aerospace field: North American Rockwell, McDonnell Douglas, the Hughes Tool Company (helicopters and armaments), and many other lesser-known firms. Peck charges that Dornan does not aggressively pursue contracts and grants for these industries. The 27th used to be number one in the nation in aerospace, Peck says, and he claims he

would work harder than Dornan to resume that position.

Yet Dornan's aide, Arnold Steinberg, insists that there is no other congressman in the nation who is more willing to go to government offices and fight, in person, for those contracts. "Most congressmen send letters," he says. Steinberg also challenges the notion that Peck, who has no military experience, would be as successful as a former fighter pilot who flies planes two or three times a month and talks the language of the people in the aerospace industry.

In fact, Dornan was influential this year in helping to win a \$24.4 million computer contract for the System Development Corporation in Santa Monica. In a preliminary agreement, the contract had been awarded to the Control Data Corporation in Minnesota. In part because of a Dornan protest to the General Accounting Office, the contract eventually went to the Santa Monica firm.

The phantom checks

Dornan will take the offensive on an issue of campaign ethics. During a trip through the South in 1978, Peck's actor-father met a potential contributor named John H. Dennis, an Alabama businessman. In October of that year, Dennis came to Los Angeles and met with candidate Peck, then in the final month of his first campaign against Dornan.

In early November, Peck received the first of 13 \$1,000 cashier's checks, many in numerical sequence, as contributions to his campaign. Peck used the money. In May 1979, Dennis admitted that he had written 12 of the 13 cashier's checks under "phantom names." Only then did Peck return the money — in one \$13,000 check made out to Dennis. The Federal Election Commission prohibits contributions from a single person in excess of \$1,000. It is also illegal to make contributions under other people's names.

The Dornan camp feels that Peck's handling of these contributions was, at the very least, highly irregular. "When

DORNAN



you receive a \$1,000 contribution during a campaign, it is a major event," aide Steinberg says. "You check out where the money is coming from. You try to see if the spouse will make a donation. You send thank-you letters. Peck did none of these things. It appears that he could have been looking the other way."

Peck's version of the contributions from Dennis (who is now in a federal penitentiary in Alabama, sentenced to 4½ years for corporate fraud) is quite different. He projects the image of a candidate who was unwittingly duped. "When we found out Dennis was in legal trouble," he says, "we sent the money back. This was in voluntary compliance with the Federal Election Commission. We have received no federal correspondence on this matter."

Dornan charges that the FEC has been lax on the incident. He says that he had to fight for eight months before the FEC would release documents relating to the Dennis contributions. Dornan even visited Dennis in prison last April. He now asserts that "Peck is destroyed as a serious candidate. He will be unable to mount a credible campaign, because

this will develop into a horrible scandal." He calls Peck an "outrageous liar" and predicts a federal indictment for Peck.

Peck is counterattacking with the charge that Dornan — after two terms in the House — has been unable to get on any important committees and has failed to introduce a single bill that has ever gone beyond committee. "He's interested in headlines," says Peck, "not committee work." Peck says that, as a member of the majority party, he would be able to get better committee assignments.

Such charges anger Dornan: "Carey Peck is either drunk or taking a cheap shot." In order for any bill to get to the floor of the House, it must be reintroduced by the majority party, even if originated by a Republican, Dornan says.

A contrast in styles

In style the two men are very different. Dornan seems to exude energy and can talk for hours at a time on a single issue, even to the distraction of his aides. His speech has a scattershot effect, as is evidenced by the \$10 million slander suit brought against him by activist Tom Hayden, who charges Dornan with linking him to terrorism at Los Angeles International Airport. (Dornan insists he was misquoted.) Despite his insistence that he wants to run on the issues alone, Dornan has some words for his challenger that border on the vituperative. "Carey Peck," he says, "is a sick, pompous little ass with a phony accent," who he claims "is playing doggie for Gregory Peck."

The younger Peck, on the other hand, is quiet. He listens carefully and has a reserved personality — perhaps too reserved for a political candidate. Some of his answers may startle the Democrats of the 27th District, who comprise 51 percent of the registered voters. Asked why he is a Democrat, Peck responds, "Because I say I am."

Peck will have to demonstrate more forcefulness than that in a series of upcoming debates if he expects to unseat the oratorical Congressman Dornan in November. 

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ILLUSTRATION BY GRACE MATEU



The contest between Leo McCarthy and Howard Berman for the Assembly speakership appears so tight that the outcome of a single Assembly race this November could determine the test of strength in the Democratic caucus. In order to determine which candidate has the best chance of winning, it is necessary to project the makeup of the Assembly following the November election. At the time the speakership is decided in December, how many Democrats will there be in the Lower House?

If the number falls below 41, the Berman-McCarthy conflict will have been in vain. It will be the Republicans who will choose the leader — unless there is a 40-40 split, and then some coalition would have to be formed. However, it looks as though the Democrats will probably hold at least 41 seats come December. But how many more than 41? As a general rule, it appears that McCarthy's chances improve as the number of Democrats increases. Berman appears to have more solid votes among returning members likely to be re-elected and freshmen in relatively safe districts. But McCarthy has the edge in other districts where Democrats might win, especially those in Northern California.

One key question: How will the "Floating Four" — a quartet of incumbents once in Berman's camp but lately working with McCarthy — vote at showdown time? McCarthy now counts all four of these votes as his. Berman predicts that he will have one vote for sure and probably more. The four: John Thurman, Curtis Tucker, Norman Waters and Bruce Young.

Here is how the rest of the Demo-

cratic nominees look:

Safe incumbents for Berman (15): Alatorre, Bane, Berman, Chacon, Costa, Elder, Goggin, Hughes, Lehman, Levine, Lockyer, Moore, Robinson, Rosenthal, Torres.

Safe incumbents for McCarthy (13): Agnos, Bosco, Brown, Deddeh, Greene, Hannigan, Harris, McAlister, McCarthy, Roos, Tanner, Vicencia, Maxine Waters.

Assumed winners for Berman (6): newcomers Campbell, Martinez, Farr; incumbents Bates, Hart, Ingalls.

Assumed winners for McCarthy (3): incumbents Papan, Mangers, Vasconcellos.

Possible winners for Berman (2): incumbent Kapiloff, Cramer.

Possible winners for McCarthy (3): incumbent Mori, newcomers Cortese, Garcia.

Other possible winners for Berman (3): Floyd, Katz, Dominguez.

Other possible winners for McCarthy (5): Bridges, incumbent Wray, Hasseltine, Johnston, Charles.

Longshots for Berman (6): Bovetti, Allen, Nagel, Sheedy, Mathews, Afriat.

Longshots for McCarthy (3): Sher, Asera, Laufer.

Although the above categories are far from precise, they can be used to measure the relative strength of the candidates at various levels of Democratic success. If the Democrats were to win a bare majority, Berman would have 21 votes to 20 for McCarthy, even if the four floaters went with McCarthy. Adding the possible-winner category, Berman would have 23 and McCarthy 23 (including the floaters). Adding the other possible winners, McCarthy would go ahead, 28-26. But that assumes not only that the floaters all stick

with the incumbent speaker but also that the Democrats would increase their current 50-30 majority in the house to 54-26, and that's not considered a likely prospect.

In a sense, the Berman-McCarthy contest — undoubtedly the most expensive and most bitter speakership battle in history — may hinge on the actions of Republicans. How the GOP allocates its resources and which candidates run the most effective campaigns will have a great deal to do with the coloration of the Democratic caucus come December.

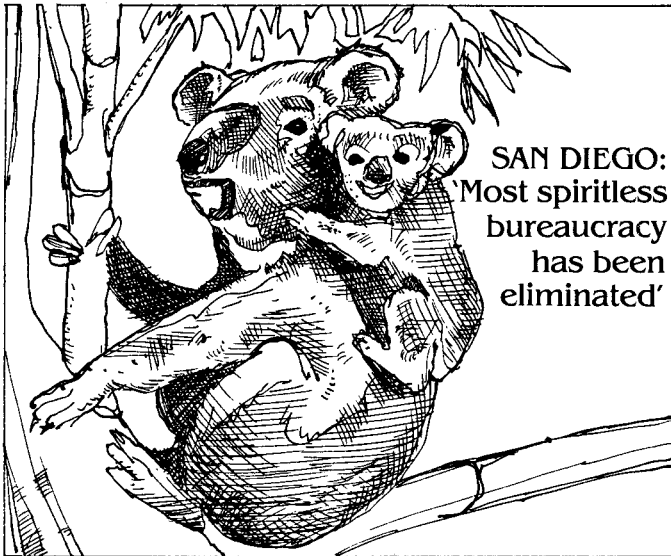
Most Republicans now realize that the Democratic internecine feud is not healthy for the GOP. Democrats are now running with increased intensity, more money and with more professional management than would have been the case without the leadership struggle. Some Republicans who would have been able to win re-election just by going through the motions now find themselves involved in heavy-duty campaigns. Non-incumbent districts that might otherwise have been forfeited to the GOP are now two-party battle fields.

It could turn out that the Republicans will select the Democratic speaker in December. There is no absolute guarantee that the Democratic caucus will march solidly behind the winner, whether it be Berman or McCarthy. If the loser can hold his forces, he can prevent the caucus winner from becoming speaker. At that point, the Republicans would become the lead force in picking a winner. But will the Democrats allow that to happen? A more likely scenario is the selection of a third person as a compromise speaker. It could be someone who now holds a leadership post, such as majority leader Willie Brown or Ways and Means Chairman John Vasconcellos. But there is even more talk about the election of someone who has remained detached from the battlefield, a speaker with a great many friends and no great overt desire to wield power. One name being tossed around the capitol: Frank Vicencia, former dairy lobbyist and a current McCarthy supporter. The theory is that someone like Vicencia is now needed to patch the wounds and take care of the speakership until someone with the more traditional qualities of leadership comes along.

Perhaps the cleanest way for the speakership struggle to end would be for the Republicans to capture control of the Assembly. But then Berman and McCarthy would probably go to the mat over which of them would become minority leader.

E.S.

A veterinary checkup for the 15 zoos of California

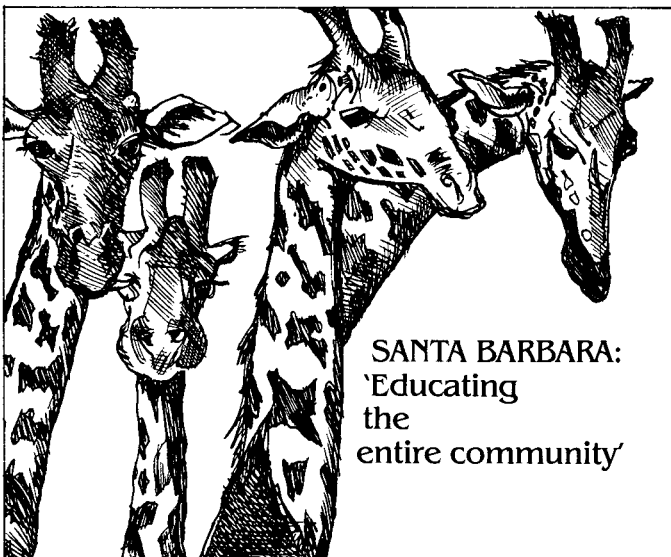


By DR. CHARLES J. SEDGWICK AND
SHIRLEY SEDGWICK

In the municipal panic that followed the passage of Proposition 13, the Merced City Council decided it had to shut down its Applegate Zoo to save money. But that decision was quickly reversed when an unprecedented crowd of children and adults showed up at a council meeting to make emotional speeches about animals and zoos. The city fathers backtracked immediately and reopened Applegate.

In fact, the post-13 fiscal crunch never hit Merced or its zoo as the council had anticipated. Thanks to bailout funds from the bulging state surplus in Sacramento, few of the publicly supported zoos in California suffered more than postponed capital improvements or increased admission fees. Los Angeles Zoo laid off 21 employees, none of them animal keepers. Roeding Park Zoo decided to renovate some existing facilities that had previously been scheduled for demolition and replacement. Despite some hefty hikes in admission rates, attendance dipped only temporarily in most zoos and then climbed to normal or above-normal levels.

Yet zoos throughout the state do face major problems in the future — and not all of them are related to finances. There is growing interest in replacing municipal management with private support from nonprofit zoological societies. There is increasing regulation by the federal government. And there are the perennial headaches that all zoo directors share: inflation, bureaucratic hassles and the opposition of anti-zoo zealots.



Setting the standard

In the world of California zoos, there is clearly one that sets the standard for excellence: San Diego. In terms of budget, prestige, facilities and animal collection, San Diego's Balboa Park Zoo and the Wild Animal Park in nearby Escondido fully deserve their international reputations. Unlike most of the other zoos which must rely on city and/or county governments for support, the San Diego parks are operated by a wealthy, powerful zoological society.

The community of San Diego has always been blessed with a successful zoo and wild animal park. Most self-serving municipal politics have been kept out; most spiritless bureaucracy has been eliminated. The zoo and park have flourished ever since Dr. Harry Wedgeforth gave the San Diego Zoological Society such a strong push at the beginning of this century that the momentum is still carrying it forward today. Old-timers say that Wedgeforth could not be dominated by any bureaucracy. But it's probably not true, as the local legend goes, that he and others dug sewers and drainage lines for the zoo in Balboa Park in the dead of night to avoid municipal interference.

Labor strife has also spared San Diego. Former Director Charlie Schroeder was shocked once in the late '60s to learn that his animal keepers had organized. The local Teamsters representative politely called him one morning and gave him a half-hour to come down and get acquainted with collective bargaining. His initial reticence resulted in a short strike



Dr. Charles J. Sedgwick, former director of veterinary services for Los Angeles and San Diego zoos, is currently campus veterinarian and professor at UC Davis. Shirley Sedgwick is completing work on a master's in physical anthropology, with emphasis on primatology.

that was amiably settled with little inconvenience or discomfort to anyone, including the zoo animals. The only foreseeable problem that could damage San Diego's zoo future would be a serious gasoline shortage that would reduce the thousands of annual visitors.

If San Diego is the giant success story among zoos, San Francisco is the story of unachieved potential. The Bay Area contains a large and sophisticated community with a more efficient public transportation system than exists in Southern California — surely a community able and willing to support a first-class zoo. Unfortunately, the San Francisco Zoo is like a brutalized, glassy-eyed pugilist who has nearly been knocked out and is hanging onto the ropes. It started as well as the one in San Diego, but apparently there were no Harry Wedgeforths available to give San Francisco that initial healthful push. A strong tradition of management free of politics and petty pressures never emerged, and the zoo has suffered accordingly.

After months of public and newspaper complaints, the Board of Supervisors last year ordered an investigation of zoo conditions by its Animal Control and Welfare Commission. The report chronicled a sad story of the zoo's decline: an animal population about half of what it was only a few years ago; a feuding, demoralized and insubordinate staff; animals purportedly neglected and littered grounds; administrative incompetence in dealing with all the problems.

Strengths and weaknesses

Public hearings on the report last month produced still more finger-pointing and conflicting charges of blame. But it is clear that pressures are building to turn over the zoo to the private Volunteer Zoological Society, along with a hefty city subsidy for the first years of rebuilding. The present zoological society appears to be just as talented, resourceful and resolute in its desire to improve the zoo as the San Diego Zoological Society. It obviously contains many excellent people who are ready, willing and able to start the push that could make the zoo great. But political practices in San Francisco have always been closed to outside influences, and it may be too much to ask city officials to release the reins of control over any area of influence — even a zoo.

Between the two extremes in San Diego and San Francisco range a variety of public zoological parks around the state. (See box.) Some of their individual strengths and weaknesses help to define what zoos in general will be facing in the future:

- **Eureka** — In spite of the remoteness of the Sequoia Park Zoo and a somewhat depressed area economy, the community has developed a Zoo Advisory Committee to promote its facility. The committee finds local artisans and businesses to build or sponsor exhibits; civic pride in the resulting park is generally shared. Instead of being harassed by the often pessimistic and skeptical California Fish and Game Department, the zoo now helps the department with some of its problems.

- **Sacramento** — The capital city enjoys one of the most attractive settings and friendliest atmospheres of any zoo in the world. But the Sacramento Zoological Society is struggling to fund any major capital improvements. This is no reflection upon the dedication of society leaders, but they seem to have been unable to mobilize the Sacramento community into effective support of the zoo. Improvements in the Sacramento Zoo are currently at a standstill; there have been none for more than two years. Inflation has eaten up small increases in municipal funding just for operational costs. Statewide, inflation has caused more fiscal problems for zoos than Proposition 13.

- **Lodi** — The Micke Grove Zoo faces the same tightening purse strings and inflation that have limited Sacramento's progress. Yet this community has recently



found a surprising reservoir of private support and enthusiasm for improving its zoo. Landscaping and animal enclosures have been improved through private donations and subscriptions. A zoological society is forming and volunteer guides are in training.

- **Oakland** — Recent zoo improvements have been limited. Because of tightened fiscal policies since Proposition 13, city maintenance monies have gone into operational costs. In the past it was possible to visit Oakland's Knowland Park Zoo and to find the overall-clad workman welding or bolting inside an enclosure to be Ray Young, the facility's veterinarian for nearly two decades.

- **Santa Ana** — Zoo receipts here are absorbed into the city's general fund, and a mechanism for making the zoo a special community project has not yet been found.

- **Los Angeles** — The same general-fund policy of Santa Ana exists in Los Angeles. Zoo managers, who are city employees, are categorically discouraged from circumventing city fiscal priorities. But the very active Greater Los Angeles Zoological Society is allowed to raise funds for capital improvements, and the Los Angeles populace takes great pride in its zoo's new exhibits. The existence of a strong zoological society may indeed make the difference between success and failure at some of the state's major zoos during the next decade.

- **Santa Barbara** — Primarily because of the philosophy of Director Edward R. McTolbridge, the entire thrust of this zoo is education, both for employed keepers and staff and the entire Santa Barbara community. McTolbridge would make zoo animal keepers of everyone through the outstanding educational programs at the Santa Barbara Zoo.

- **Atascadero** — This is typical of many small zoos that begin with the efforts of a few persons to save or rehabilitate sick or permanently injured wildlife. The facilities and the capacity gradually grow until the community has a zoo that then acquires municipal support. As public interest in such projects grows, small zoos require planning and direction. But a zoo that has grown up like Topsy can be a thorn in the side of individuals administering local government. City bureaucrats accustomed to police, fire and garbage problems often have little understanding of a zoo's spe-

cial needs — needs which cannot always be predicted or solved a year in advance.

In the highly specialized world of zoo management, problems tend to differ with the size of the facility; yet there are definable characteristics of good zoo management, whether the parks are large or small. In various major zoos with a great diversity of animal species, the director is often a person with specialized business and managerial skills but without biological or zoological background. In such cases, a director needs a co-director with broad zoological and husbandry experience if the zoo is to avoid inefficiency, wasted monies, confusion and lost opportunity. The reason: Within the large zoos, the specialists — curators, veterinarians, scientific investigators and others — ply the businessman-director, like barristers before a judge, with biased arguments that serve their own restricted self-interests. Faced with such conflicts, the director casts about for what sounds like the best course of action, but which often is not. Anxiety over highly emotional issues has even resulted in decisions being made for animals without benefit of biological input to the director.

In small zoos with fewer species of animals to maintain,

the problems of zoo management are much simpler. Unbiased consultation on what to do with animal problems can be solicited from experts outside the zoo who have no institutional axes to grind. In addition, animal-care personnel can easily and quickly become expert at working with a small number of animals in their charge.

Zoo staffing and education is another area in which most facilities have common problems. About three days after keepers walk through a zoo gate for the first time, they develop a proprietary attitude toward their assigned zoo animals. Keepers seem to share a universal fear, when they first take such a demanding job, that they will not measure up to their responsibility and that their animal charges will expose this inadequacy by getting sick or by dying.

Such zoo keepers can be very defensive if approached thoughtlessly or ignored entirely, such as when a veterinarian must provide services for any reason. They may easily become disenchanted with their work by being paid low wages or by having their opinions regarding animals ignored. In California, many have joined unions for collective bargaining purposes, have gone on strike, and have held individual press conferences to decry real or imagined zoo

APPLEGATE ZOO Merced 5 Acres ANNUAL BUDGET \$32,365 CAPITAL IMPROVEMENT FUND \$1,750 SPECIAL FEATURES Adopt-an-animal program.	CHARLES PADDOCK ZOO Atascadero 3 Acres ANNUAL BUDGET \$60,000	FOLSOM ZOO Folsom 5 Acres ANNUAL BUDGET \$50,000 SPECIAL FEATURES Collection of injured and rehabilitated animals.	LOS ANGELES ZOO Los Angeles 113 Acres ANNUAL BUDGET \$3,037,631 SPECIAL FEATURES Tours, zoomobile, speakers' bureau, lectures.	OAKLAND ZOO Oakland 500 Acres ANNUAL BUDGET \$350,000 SPECIAL FEATURES Baby zoo.
PRENTICE PARK ZOO Santa Ana 15 Acres ANNUAL BUDGET \$179,935 SPECIAL FEATURES Children's contact zoo, mini-zoologist summer school.	ROEDING PARK ZOO Fresno 10.5 Acres ANNUAL BUDGET \$390,000 CAPITAL IMPROVEMENT FUND \$160,000 SPECIAL FEATURES Zoomobile, tours, wildlife workshops, learning packets.	SACRAMENTO ZOO Sacramento 15 Acres ANNUAL BUDGET \$494,000 SPECIAL FEATURES Tours, speakers' bureau, reptile house, good cat collection.	SAN JOSE BABY ZOO San Jose 3 Acres ANNUAL BUDGET \$184,000 CAPITAL IMPROVEMENT FUND \$5,000 SPECIAL FEATURES Baby animals, teacher, zoomobile.	SEQUOIA PARK ZOO Eureka 53 Acres ANNUAL BUDGET \$70,000 SPECIAL FEATURES Education program using students from Humboldt State.
SAN DIEGO ZOO San Diego 100 Acres ANNUAL BUDGET \$14,245,592 CAPITAL IMPROVEMENT FUND \$3,000,000 SPECIAL FEATURES Tours, speakers' bureau, lectures, outstanding lemur, psittacine and marsupial collections.	SAN DIEGO WILD ANIMAL PARK Escondido 1,800 Acres ANNUAL BUDGET \$6,363,359 CAPITAL IMPROVEMENT FUND \$565,000 SPECIAL FEATURES Animal and botanical tours, garden and animal shows, traveling teacher.	SANTA BARBARA ZOOLOGICAL GARDENS Santa Barbara 80 Acres ANNUAL BUDGET \$200,000 CAPITAL IMPROVEMENT FUND \$80,000 SPECIAL FEATURES Adult education, junior zookeepers, summer classes, teacher, tours.	SAN FRANCISCO ZOOLOGICAL GARDENS San Francisco 124 Acres (70 in use) ANNUAL BUDGET \$1,374,000 CAPITAL IMPROVEMENT FUND \$2,500,000 SPECIAL FEATURES Zoomobile, tours, speakers' bureau.	MICKE GROVE ZOOLOGICAL GARDENS Lodi 8 Acres ANNUAL BUDGET \$70,000 CAPITAL IMPROVEMENT FUND \$40,000

management grievances — most recently and frequently in San Francisco. Senior keepers in a zoo and those with shorter tenure have a tendency to resent or distrust one another, especially if one group or the other has some formal college education. Directors sometimes have to “manage” their staffs as carefully as they do their animal collections.

In San Diego, many of the early keepers were retired armed-service personnel. At one time the zoo administration favored employing these people because it felt that they were solid citizens, could take orders and would not demand high salaries or fringe benefits since most were on government pensions. This group served the zoo very well, with a few exceptions. However, most came to zoo work with very little understanding of animals or zoology. It is perhaps not surprising that many of these people have gone on to other zoos in managerial positions, with only their experience as a keeper at the San Diego Zoo for credentials. San Diego has provided head zoo keepers and managers from these ranks to many smaller zoos in California and other states.

To help with zoo-keeper problems, the San Diego Zoo once held training classes for staff members. Such programs can lead to a helpful exchange of information among keepers, managers, veterinarians and curators. San Diego Zoo also had a continuing keeper-training program for several years, but such in-service training is more the exception than the rule.

A growing burden

Wherever two or three zoo directors gather together, a chief topic of conversation is the growing burden of state and federal regulations affecting animals in captivity. Such regulations — originally designed to assure humane and healthful treatment of wildlife — have multiplied in the past decade, and in some cases the results have not always been those intended. Among the laws and regulatory agencies:

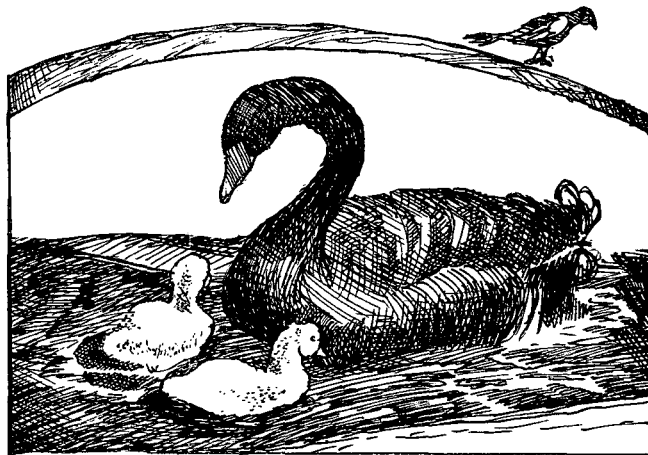
- **The U.S. Department of Agriculture**, which sets animal welfare regulations for all zoos in the country. The regulations are intended to assure adequate housing, food, veterinary care and humane treatment for zoo animals. Although specific guidelines have not been established for all situations and species, USDA veterinary inspectors must evaluate all zoos at least twice a year and prescribe improvements where needed.

- **The U.S. Department of Interior, Marine Mammal Protection Agency.** Not only is the care of all exhibited marine animals evaluated by USDI inspectors, but the manner and circumstances of their acquisition is very thoroughly monitored by the Interior agency.

- **Endangered Species Conservation Act of 1969.** The Interior Department also administers this law, designed to prevent importation of endangered species from the wild and to discourage their interstate shipment. In theory, the act was enlightened — but in practice it has produced a maze of red tape, bureaucratic confusion and inflexible animal-management rules. For example, San Diego Zoo was recently afflicted with a surplus of Siberian tigers because its own animals were breeding successfully but the federal regulations made difficult the sale or loan of the tigers to zoos in other states.

- **California Occupational Safety and Health Act.** If any zoo visitor notes any hazard to human health in a zoo, he or she can report it to Cal-OSHA. This agency has rules covering most occupational safety and public-health conditions in public institutions, and it can cite other state agencies, dictate compliance with its rules and levy fines against persons and institutions which do not comply.

- **The California Fish and Game Department**, which has the authority to restrict the acquisition and maintenance of certain types of foreign or non-native California wildlife that might escape from a California zoo and become success-



ful in competing with native wildlife or be detrimental to agriculture.

The records of inspection of all federal government regulatory services are open to the public. Individuals and groups concerned with animal welfare — especially anti-cruelty societies — regularly review them. Such societies then press the regulatory services to follow up on citations and may, if not satisfied with the result, complain to the news media to bring public pressure for improvements. Sometimes their efforts are misguided and overzealous, but zoos must deal with them diplomatically.

Indeed, as institutions which are very dependent on public support and sympathy, zoos cannot afford to ignore even their bitterest opponents. There are small but vocal organizations which seek to disband all zoos, and they seek out the worst-case examples. It is true that many zoo exhibits were established years ago, when captive wildlife were represented as curiosities in a circus sideshow atmosphere and exhibit caging was barred like jails. This is a definite problem for older zoos that do not have funds to change such facilities. One paradox persists, however: In many zoos' old, box-like enclosures, animals have set longevity records and have actively reproduced. But that is no defense of sterile, uninteresting cages in zoos.

Other critics regard all zoos as evil because they incarcerate animals that should lead a free life in a native habitat. Some of these critics will concede that a well-managed zoo is a fair alternative to the species destruction occurring in the wild, where habitats are being lost and animals exploited by trapping, hunting, and agricultural industries.

But only wealthy zoos are able to purchase animals from their native habitat in foreign lands. Procuring animals from the wild is gradually being replaced by successful captive breeding programs. The once-rare California tule elk was probably saved from extinction by the Los Angeles Zoo. The animal reproduced well in captive environments and has now been reintroduced to certain former ranges in the state where the beautiful species has been nonexistent since miners decimated it during the gold-rush years. The now extinct California grizzly bear could have been saved by modern zoos of the state had they existed back in the early 1900s, when the last specimens of this unique species were “collected” for trophies.

Most Californians are drawn to and love their zoos, both large and small, for complex reasons. Zoos are a place of interest and drama. They can be a place of beauty and cooperative community achievement. They can be a place for graphic, colorful education and discovery.

It may be that such public support, properly informed and focused, is the best source of strength for all zoos in their uncertain future. Whether operated by local governments or nonprofit societies, zoos cannot afford to lose touch with the children and adults like those who quickly told the Merced City Council that budget-cutting would not begin at the Applegate Zoo. 🏠

Can Jarvis peddle a perplexing pension proposal?

By MAUREEN FITZGERALD

Jaws III. But Harvey Englander of Butcher-Forde Consulting, the firm that runs Jarvis' campaigns, says that the insiders have called the new project "Goldfish III." Englander recognizes that it will take extensive research before work can start on the drafting of Goldfish III. At the earliest, the initiative might be ready for public examination at the end of this year.

Once the technicalities are out of the way, Jarvis will be able to resume his attack on public pension systems. He has selling material galore. Over the years, legislators have been giving themselves handsome pensions and establishing a liberal system for judges (made even more liberal by a recent Supreme Court decision). At the local level, public officials have been agreeing to increased retirement benefits in closed-door collective bargaining sessions. In an era of shrinking government dollars, pensions are representing a greater share of the fiscal burden. In addition, they represent a staggering commitment for future taxpayers.

In the trenches

Any pension initiative would have to be extremely complex, and Jarvis would be forced to explain the provisions to an electorate that can hardly be expected to understand actuarial and legal concepts. Also, there will undoubtedly be a high-powered campaign against such a measure by the political establishment and especially by public employees. The teachers, police officers and firefighters have both the money and peoplepower to fight such a measure in the trenches — just as they did successfully against Proposition 9 last June. Legislators and judges will not fight the measure up front, but they can be effective in raising money and working on opinion leaders and business executives. The business community might be a natural ally for Jarvis because his plan would cut the cost of government and relieve the pressure in Sacramento for assumption of a greater portion of the tax burden by corporations. The State Chamber of Commerce, the California Taxpayers Association and the California Association of Realtors were among the sponsors of Paul Gann's initiative placing limitations on government spending.

How would the general public react? Perhaps the best way to win general voter support is to point out that rising pension costs tend to erode basic government services because they are, in effect, in competition for the same tax dollars. Jarvis would be able to present Goldfish III as a way to cut government costs without reducing services — something he was unable to do in the Proposition 9 campaign.

It will be difficult for opponents to deal with one basic fact: Government workers get better pension benefits than their counterparts in private enterprise. Reports comparing the two sectors generally note that private plans require a higher retirement age, do not contain automatic cost-of-living escalators and use lower base schedules to determine



ILLUSTRATION BY CHRIS VAN OVERLOOP

Undaunted by the defeat of Proposition 9, Howard Jarvis now wants to win voter approval for a plan to curtail the pension benefits of elected officials in particular and public employees in general. But can he do it, even if the issue has public appeal? Even before Jaws II went down to defeat, Jarvis was talking about retirement plans as the next target of his initiative crusade: "You and I work all our lives for \$500 a month, and some of these people get \$3,000 or more a month."

From that simplistic explanation of the injustice of the overall pension system, Jarvis and his associates will find it is a mighty long leap to the preparation of a ballot measure that will tackle retirement plans in an organized and realistic manner. There are literally hundreds of systems in California with differing criteria for the granting of pension benefits. The legal issues are extremely complex.

The media labeled the prospective new Jarvis measure

Maureen Fitzgerald is the director of a "Citizen Democracy" research project being conducted by the Journal with the assistance of a grant from the Ford Foundation.

monthly payments. Many workers in the private sector receive only Social Security benefits. The California Taxpayers Association has been calling for pension reform, but legislators have been reluctant to open Pandora's box, which might let loose their own retirement benefits.

Reforming pensions cannot be accomplished with a broad sweep of the initiative brush. In some cities and counties, retirement plans are spelled out in charters and thus would be extremely difficult to change. In the city of Los Angeles, Councilman Marvin Braude has been attempting to reduce benefits for police and fire employees. Under the LA city system, a police officer can retire after 20 years of service regardless of age, pick up automatic cost-of-living increases and have a pension based on the last day's pay. Braude wants to reduce these benefits via a November vote in Los Angeles.

In Los Angeles last year, the city spent 62 cents on pensions for every dollar of police-and-fire payroll. In San Francisco, the cost is even higher — one dollar for pensions for every dollar in payroll.

The pressure to cut pensions in local government could mount as a result of Jarvis' own Proposition 13. That's because some governing boards are interpreting a provision in the Jarvis-Gann initiative as approval for the use of property taxes to meet voter-approved retirement debt. If San Francisco, for example, should make maximum use of that loophole, the city tax rate could jump from about \$5 to \$8.30.

How radical?

The key decision for Jarvis and the Butcher-Forde organization is how radical a pension assault they wish to undertake. Should they charge after only legislators and judges? Or should they add state employees and even local employees? Another key question: Should the initiative apply only to future employees or should an attempt be made to cut back benefits to those already working for the public? The courts have held consistently that pension benefits, once granted, can not be taken away. The theory is that the benefits are contractually obtained deferred compensation. The

Los Angeles law firm of O'Melveny and Myers at one time conducted a study for a Los Angeles citizens' committee and emphasized that the court decisions applied to years already worked. The firm suggested that it might be possible to reduce benefits for future years of employment.

Jarvis apparently can go one of two ways in dealing with the problem of current employees. He can adopt the two-tier system already used in Los Angeles and San Francisco, setting lower benefits for new employees and keeping the higher rates for the old. Or he can draw up an entirely new pension system, terminating all existing plans as of a specific date and starting a new one for all employees. However, there are numerous technical problems in drafting the details of this second alternative. Most likely, Jarvis will propose a broad constitutional amendment establishing basic principles but leaving the details to the Legislature.

Here are some of the specific problems that would have to be addressed:

- **Retirement age.** With most humans remaining healthy longer, should people be allowed to retire at 50 (for police and fire) or at 55 or 60?

- **Social Security.** Not all public workers are on Social Security. Should all be forced to be either in or out?

- **Cost-of-living.** Should there be a limit to increases for inflation? Some public plans now provide a cap of only 2 percent, while others are keyed to the consumer price index.

- **Disability provisions.** It is getting easier for more employees to retire early because of disabilities. Should the law make it more difficult for relatively young people to obtain benefits, especially if they are able to return to the job market?

- **Multiple dippers.** Should Californians be allowed to receive pensions from more than one public retirement plan? Should an overall limit be established for those who accumulate credits in more than one plan, like former Attorney General Evelle J. Younger?

- **Calculation of benefits.** Under some plans the key is the average salary for the last three years of work. Under others, it is the final day's pay. Still others use the entire work history.

- **Employee contributions.** In most public plans, employees are forced to make contributions (in addition to the Social Security deduction for systems using the federal system). Most private plans are totally employer-financed.

- **Differences between systems.** Is there any sound reason why legislators, judges, police officers, highway patrol officers, prison guards and general civil servants should be treated differently?

How serious?

How seriously should Jarvis' threat be taken? Public employee organizations are trying to dismiss the proposed Goldfish III on the grounds that the Jarvis phenomenon ended with the defeat of Proposition 9. Indeed, it is likely that such an initiative campaign would probably fail miserably if it were based solely on Jarvis' authorship. Jarvis needs plenty of help from business groups, local taxpayers associations and political leaders. Jarvis has already indicated that he would consult with constitutional experts before bringing forth Goldfish III because even minor drafting errors would probably render the attack harmless.

Proposition 9 was the first initiative in California history to qualify strictly by mail. More important, the mail solicitation just about paid for itself — \$2 million worth. Can Butcher-Forde produce the same results with a subject as complex as pensions? Will the average citizen respond to a call to circulate petitions and send money for a cause with so little political appeal? Or can Butcher-Forde take an ordinary goldfish and make it look like the fanciest fish in the bowl?



Pension-plan comparison

The following chart shows what sample public employees and officials receive if they retire at the age of 60 after 25 years of service. (Note that public-safety workers can receive the same benefits at 50 as others can obtain at 60. Safety workers receive even higher benefits for working until age 60.)

	Final Annual Salary	Years of Service	Annual Pension
School teacher			
age: 60	\$26,000	25	\$11,860
State worker			
age: 60	\$26,000	25	\$11,860
Legislator			
age: 60	\$25,555	25	\$17,019
Highway patrol			
age: 50	\$26,000	25	\$11,860
age: 60	\$26,000	25	\$16,011
Local fire or police			
age: 50	\$26,000	25	\$11,860
age: 60	\$26,000	25	\$16,011
Municipal court judge			
age: 60	\$52,366	25	\$39,274

WHO OWNS MY FACE?

BY ANNA SHAFF

One woman's protest against 'electronic captivity'



Earlier this year, members of the California Judicial Council voted for a one-year experiment. They voted to eliminate my right to my own face. Beginning this summer, they are allowing the video-eye to display my face in a courtroom, to scrutinize any tic, wink, blink or blemish at the cameraman's leisure. To scrutinize it, perhaps at a distance reserved only for intimate moments. And then, to flash it to millions of strangers.

In April, the U.S. Supreme Court agreed to hear a Florida case (*Chandler v. Florida*) in the fall. Two defendants claimed their right to a fair trial was compromised by television coverage. Faced with the possibility of an aborted experiment, the California Judicial Council modified its original ruling. Instead of requiring solely the judge's consent for electronic courtroom coverage, the consent of defendants and prosecutors is now required. The experiment began July 1st.

By serendipitous timing, the privacy of litigants in California has been preserved. They've won a one-year reprieve. Yet, were that reprieve to be permanent — were the U.S. Supreme Court to rule that electronic coverage without consent of defendants and prosecutors is unconstitutional — there would still remain a major violation of privacy. It is the privacy not of the few who will sit as protagonists in a courtroom drama, but of the many who will be the jurors and witnesses in that drama. It is the privacy of the anonymous many: your privacy, my privacy.

Anna Shaff is a free-lance writer in San Francisco.

Last summer, without benefit of video coverage, I sat on my first trial as a juror. And I found being on display, along with the judge, lawyers and litigants, a definite discomfort. Yet this was to be an audience of 20, not 20 million. Were I again to be a participant, a witness, perhaps, and through the presence of the camera were I to have the burden of worrying about an unruly hairdo, a rumpled collar, a fleeting, revealing emotion, justice would surely suffer.

I am not a politician; I am not a celebrity. By not courting the public eye, I expect a reciprocal arrangement: I expect to preserve my anonymity, or to choose how and when to relinquish it.

Why should the presence of the camera inside the courtroom require consent, when no such rules apply outside? Because outside, a journalist in pursuit of a story pursues the subjects of that story. Those subjects have a choice: face or flee the pursuer. Inside the courtroom, freedom of choice is already curtailed. Defendants have not chosen to be there; witnesses and jurors have not chosen to be there. To then focus a camera and a microphone on these unwilling participants not only further invades their privacy, but constitutes a unique form of captivity — electronic captivity.

Fifteen states now allow electronic trial coverage; another 23 are actively considering it. In those states where consent is the law, very few litigants do in fact consent. And were the consent requirement to encompass jurors and witnesses, electronic trial coverage would no doubt grind to a halt.

And perhaps justly so. For while the

judicial system is experimenting, while viewers are gawking, while lawyers are performing, and while the jury is riveting its left eye on the proceedings and its right eye on the camera, a man or woman is on trial. And for them the drama will continue beyond the last click of the camera, long after the other participants have abandoned their roles. The outcome of the drama could well pivot on how comfortable the performers were with their roles, how focused they were on the process as opposed to their own video debut.

Yet, over and above the injustice in a particular case, looms the pervasive injustice of electronic captivity. The captivity of judges and attorneys who were trained in law school, not drama school. The captivity of defendants for whom a verdict of innocence will not erase the implied guilt implanted in millions of minds by the trial process. The captivity of witnesses and jurors whose chance association with a case has catapulted them to notoriety. In sum, the captivity which abolishes the right of each trial participant to full ownership of his or her face.

If I, as a private citizen, have a right in all other situations not to be filmed, not to be a protagonist in someone else's production, then why, when I enter the courtroom of a legal system erected to protect my rights, must I relinquish that right?

I submit that it is not the television networks and it is not the judicial system that own my face. I alone own my face. And I consider preservation of that principle a much higher priority than any benefits which electronic trial coverage could possibly produce.

A defense of Chief Justice Bird

Chief Justice Rose Elizabeth Bird has been under almost constant attack since her appointment by Governor Brown in 1977. In the following article, one of her longtime friends and a former associate in Santa Clara County Bar activities assails her attackers and defends her record as an administrator, partly in response to criticism contained in an article in last month's Journal.

By RALPH J. GAMPPELL

The newly thriving industry devoted to the destruction of the chief justice, and to a lesser extent that of certain other members of the Supreme Court, has fallen on hard times.

In the recent past, there was a predictable scenario. The prerequisite was that the chief justice and the court had surmised some artificially manufactured crisis — the hearings before the Commission on Judicial Performance as an example. Thus, with stage set, there comes the “startling revelation” — perhaps that the relationship between the justices was not all sweetness and light, that there may be some problem with the termination pay of a retiring employee of the Administrative Office of the Courts or some other equally earth-shaking event. However, there had to be added to the media reports a litany of half-baked opinions.

For this purpose, the old nags were urged around the track — in the lead that ever-anonymous “source close to the Supreme Court,” then my predecessor Ralph Kleps, and with University of California law professor Preble Stolz bringing up the rear. Thundering off to the right was Bob Kane, that journeyman insurance defense lawyer, then trial and appellate judge and now plain citizen Kane. He inveighed against the politicization of the judiciary, with the inference that his own selection and elevation resulted from his special merit shining out like a good deed in a naughty world.

The nags are now reduced in number, though Stolz is still with us as the village scold, and we have retired Court of Appeals Justice Robert Thompson running for Kane. That Thompson should quip about a “Judge of the Month Club” (those judges who have received media attention for misconduct) imparts an Alice-in-Wonderland flavor to his oracular profundities. This is the same Thompson who, shortly before his retirement, co-authored a published opinion which contained a demeaning vulgarity directed against another justice who had dissented from the majority opinion. This surely is judicial collegiality of a high order; yet it is the absence of collegiality which is a repeated criticism of the present Supreme Court. Is this the standard that the court should seek to emulate? It is common knowledge that a former chief justice did not speak to one associate justice from the

Ralph G. Gampell was chosen by Bird for his present post, administrative director to the courts. A physician and attorney, he was serving as president of the State Bar at the time of his appointment.

time that justice came on the court until that chief justice's retirement. Should that be the standard? Public records disclose that a Supreme Court justice stayed on the court for a period of some years after it had become apparent that mental disability had impaired his capacity to participate appropriately in the court's work. Where was the public discussion of collegiality at that time? Perhaps of more pertinence, where were the representatives of the media, where were those direct conduits into the court, where were those all-pervasive leakers?

The media usually turns to Stolz as an allegedly unbiased source and academic expert and hears from him how the chief justice is maladministering the judicial system. That Stolz should criticize Chief Justice Bird's administrative ability is ludicrous. Does Stolz know anything of the chief justice's administrative changes within the court, or of the changes in the Administrative Office of the Courts, except from disgruntled former employees? Did Stolz talk to the highly respected appellate justice who, at a recent appellate justices' institute in Carmel, said that he had served under four chief justices and that Chief Justice Bird was the best administrator by far?

Has Stolz spoken to another senior appellate justice, generally regarded as conservative philosophically, now serving a third term on the Judicial Council, who sees the work of the council, with the chief justice as chairperson, and that of the Administrative Office of the Courts, as being at least as good as what went before.

The three-year record

The role of the chief justice as administrator is most visible in the work of the Judicial Council and the Administrative Office of the Courts. What has been done there during the three years that Chief Justice Bird has been in office?

- The Judicial Council conducts the public's business in a business-like fashion. Meetings are no longer social events held at expensive resorts and country clubs. Instead, the council meets in state buildings and usually on weekends, to ensure minimal intrusion on the courtroom responsibilities of the judicial members of the council.

- Committee meetings are held approximately two weeks before the full council gathers, to allow each member adequate time for independent review of staff and committee recommendations.

- In a major policy change, it is now recognized that the Judicial Council represents all elements of the justice system — judges, lawyers, litigants and the citizenry. The council is not a trade association for any group. The judges, for example, have the California Judges Association to represent their views on such matters as judicial salaries, proposed legislation, etc. Predictably, this change has been received with underwhelming enthusiasm by some and has led to proposals that the judicial members of the Judicial Council be elected by judges to whom they would then owe their allegiance as constituents.

- In furtherance of this policy change, Chief Justice Bird has directed that proposals for Judicial Council action



should be circulated for criticism and comment to as many interested groups as possible before the council takes any action. Previously, the council would adopt rules first and ask questions later.

- For the first time, the Judicial Council has members from a broad range of minority groups — black, Chicano, Asian-American, and women.

- Traditionally, the Judicial Council has operated with the help of advisory committees. Under Chief Justice Bird, the composition of those committees has been broadened to include individuals who represent a microcosm of the competing interests and viewpoints. The committees have no marching orders from above other than to provide the council with their considered recommendations. For example, the chief justice appointed an advisory committee to propose rules for a one-year experiment in television, radio and photographic coverage of the courts. The committee was composed of judges, lawyers, media representatives and other laypersons so that all views could be represented in the final recommendations. The Judicial Council recently adopted these rules with minimal modification and the project began in July.

- Chief Justice Bird has appointed similarly broadly based committees to examine appellate practices in the First Appellate District, with the committee's report to serve as a focus for statewide discussion; to examine trial court congestion in Los Angeles, by means of public hearings throughout the county and an unprecedented survey of some 5,000 trial jurors; to examine the rules governing publication and citation of appellate opinions; to study the feasibility of drafting uniform statewide law-and-motion rules for the trial courts; to consider the use of audio transcription equipment in courts where a court reporter cannot be afforded by the local authorities; and to prepare training materials for nonjudicial personnel throughout the court system.

- The chief justice has initiated an evaluation of the theoretical bases of the weighted caseload system — a hallowed methodology that purports to predict the need for additional judges.

- A large number of small-scale experimental projects are constantly being conducted to test the feasibility of court improvement proposals before implementing them more broadly. The chief justice has strongly encouraged this experimentation on subjects such as mandatory arbitration, economical litigation, small claims, juror utilization and management, consolidation of court administrative services, complex litigation procedures, and drunk-driver alcohol-rehabilitation programs.

The recurrent theme is to seek broad participation in the decision-making process and to encourage public scrutiny of the activities of the Judicial Council and the Administrative

Office of the Courts. Is this bad administration?

The chief justice also has a major administrative role in personnel and budget matters. Some decisions and recommendations in no way increased her popularity, but they were required of a good administrator. For example, when Chief Justice Bird came into office, the hiring policies that she confronted reeked of nepotism and cronyism, with new employees coming in large part from the ranks of relatives and friends of those already in the system. Rarely were vacancies publicly announced, and recruitment was done by word of mouth. For example, when a Court of Appeal had two clerk's office vacancies to fill, the persons selected were the wife of the chief deputy clerk of the Supreme Court and the neighbor and friend of the appellate court's chief deputy clerk, respectively. When she met with the district's judges to express her dismay, the chief justice made clear that her concern went only to the lack of open recruitment and not to the capabilities of the specific persons involved. Is this bad administration?

Screening applicants

Support staff employees at the Administrative Office of the Courts are now hired after a selection board screening of applicants referred by the State Personnel Board or obtained through general advertising. Is this bad administration?

When the office of the Clerk of the Supreme Court became vacant on the retirement of the incumbent, there was considerable pressure to fill the office in the same old way. However, the chief justice persuaded her colleagues to allow general advertising, and the court received some 300 applications from throughout the country. A screening committee of four justices was appointed and a clerk was finally selected after this open competition. Is this bad administration?

The chief justice has made a continuing effort to bring minorities onto both her personal staff and the central staff. For example, the first Chicana ever hired at the Court worked for the Chief Justice. At the chief justice's direction, central staff attorneys no longer write opinions. Are these bad administrative practices?

Early on, the chief justice took steps to ensure that state telephones and reproduction facilities were no longer used by court-employed attorneys to further their private law practices. Is this bad administration?

Another aspect of the chief justice's administrative role is her relationship with other judges throughout the system at both the trial and appellate levels. Some 150 trial court judges, most of them from the superior courts, have already been assigned temporarily to the appellate courts, and many more will join their ranks in the months to come. The chief justice has written to all trial judges in the state

inquiring as to their interest in accepting such an assignment. She has acted on many of these responses and plans to assign every judge who has expressed an interest. Could any method be fairer? Is this bad administration?

Instead of granting squatters' rights to a favored few judges, the chief justice rotates assignments to the appellate departments of superior courts so that every judge gets a chance to serve. The chief justice has decentralized the assignment process through blanket and reciprocal assignments which enable local presiding judges to arrange between themselves to bring in needed judicial help from their own and neighboring counties. Are these bad administrative practices?

The chief justice initiated regular meetings with the presiding justices of every division of the appellate courts. They meet frequently to discuss matters of mutual concern, with all justices encouraged to place matters on the agenda. From these meetings came her proposal that, for the first time, there be made publicly available a manual of the internal operating procedures of the various divisions of the Courts of Appeal. This manual has now been distributed widely and received enthusiastically by lawyers and litigants alike. The chief justice is currently seeking the consent of her colleagues for the preparation of a similar manual for the Supreme Court. Is opening to public view that which had previously been secret a measure of bad administration?

The chief justice, as chairperson of the Commission on Judicial Appointments, for the first time established written guidelines for the conduct of the commission's public

hearings so that nominees to the appellate bench are not sandbagged by accusations of which they have no prior knowledge. Is this bad administration?

Or is it bad administration that, pursuant to a proposal by the chief justice, Supreme Court decisions are now filed at two specific times during the week for the convenience of the media and litigants? Or that litigants are informed immediately upon the filing of the decision in their case? Previously, their first information often came from a media report.

When Chief Justice Bird came to the Supreme Court, the court did not have a single dictation machine. This year, word processing equipment will be available for every justice's secretary in the supreme and appellate courts, and electronic data processing equipment will be provided for the clerk's office in the Supreme Court and in each appellate district. Doesn't she get any credit for this quantum leap forward? And perhaps more pointedly, at what switch was the prior administration asleep?

Even without electronic aids, it seems worth noting that the Supreme Court is presently more current than at any time in recent history. Is this bad administration?

More generally, the chief justice has made herself available to groups outside the traditional legal community in order to inform herself of their needs and concerns and to make them aware of the role of the justice system in the body politic.

Modesty forbids a more detailed discussion of the improvements made in the Administrative Office of the Courts under this administration. Suffice it to say that they would be readily perceived by impartial observers. 

Low-cost pamphlets for California political animals

In an election year, pamphlets published by the California Journal Press come in especially handy. They tell you how to make your way through the maze of campaign-practice laws, how political campaign firms operate, and how to identify the players in the California political game. Here are the pamphlets and their prices:

Practical Guide to State and National Campaign Reform Laws, a layperson's trip through the maze of election laws in an easy-to-understand question-and-answer format — 100 or more copies, 40 cents each; 10 - 99 copies, 50 cents each; 2 - 9 copies, 75 cents each; single copy \$1.

Computer Democracy. A limited number of reprints of this recent special section on the initiative process can be purchased at the same rate as the Campaign Reform guides.

1980 Roster and Government Guide, who's who and what's what in state government plus information on the legislative process and the congressional delegation — 100 or more copies, 25 cents each; 50 - 99 copies, 35 cents each; 10 - 49 copies, 45 cents each; 2 - 9 copies, 60 cents each; single copy, \$1.

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Ayatollah Campbell and the hostage budget

By ED SALZMAN



Believe it or not, the fight over the state budget didn't amount to much this year. It may have appeared to the public as though the conflict over the \$24 billion appropriation package was of truly monumental proportions because it lasted long beyond the start of the fiscal year on July 1st. In fact, only a fraction of one percent of the budget was in contention, and there was virtually no change in overall size and shape of the spending program Governor Jerry Brown sent the Legislature in January.

Why then was the public given the impression that the Capitol battlefield was littered with the blood of the combatants and that there were major issues involved? The answer is that the media took the budget fight at face value — as they always do. The electorate was hardly told that the traditional budget waltz was being played and that the dancers would continue to twirl their partners as long as

there was media mileage to be obtained. Budgets provide lawmakers with an opportunity to engage in partisan competition, and they think it is expected of them. In addition, it feeds their egos to have so many people waiting for them to act and for every move to be watched so closely. And for those entertaining statewide campaigns in the near future, the budget provides an opportunity for exposure on television. Senate Republican Leader Bill Campbell, for example, wants to run for governor in 1982.

Now comes the real budget battle: While lawmakers were playing with their favorite midsummer toy, technicians were already at work on the preliminary appropriations plan for the 1981 - 82 fiscal year. Following the defeat of Proposition 9 in June, this year's budget became a large piece of frosted cake. The state larder was still sufficiently stocked with surplus funds to prevent any politically difficult decisions from being forced upon the fiscal committees. Instead of being faced with severe cutbacks under Jarvis II, the central issue became the level of cost-of-living increases for state employees, welfare recipients and health-care providers.

Next year the state should finally be forced to face the impact of the Jarvis-Gann initiative enacted in June of 1978. For the past two years, local government has been bailed out by the huge state surplus. If state finance director Mary Ann Graves is correct, the reserve tank will soon be empty and the state will be forced to adopt an austerity standard for the budget Brown will announce in January. How tight must the Administration pull the drawstrings? That depends on general economic conditions and state income from tideland oil. With the institution of cost-of-living indexing for the state income tax, the years of unbalanced budgets apparently have come to an end. For the past two years, state revenues have not even come close to meeting outgo.

Questions for 1981

How will the governor construct a 1981 - 82 budget, assuming that he will not propose increased taxes — something that has been anathema to Brown since he launched his political career? He can reduce or eliminate cost-of-living increases despite the inflationary spiral, and he can raid funds that have traditionally been salted away for higher-education construction (the "coffee fund"). Or he can back-track on state assistance to local government, allowing them to feel the pain of Proposition 13.

At the time Brown introduced his 1980 - 81 budget in January, it seemed like a meaningless formality. (See "Brown's shaky budget," February 1980.) At that time, it appeared likely that Proposition 9 would be enacted and the entire state and local fiscal picture would be redrawn overnight. Lawmakers were paralyzed. They had to wait for the June

election to see what faced them. In the interim, they came up with a variety of tax-relief programs, most of which evaporated once the Jarvis threat vanished.

In the January budget, Brown talked about a 9 percent cost-of-living increase for state employees, welfare recipients and others. A hike of 10.5 percent was negotiated with state employees at a cost of about \$500 million. The scene then shifted to welfare. Under the welfare reform package passed during the Reagan Administration, those on relief are entitled to cost-of-living increases established by formula. Without any legislation, the 1.4 million covered by the AFDC (aid to families with dependent children) program would have received 15.5 percent hikes. The 700,000 aged, blind and disabled would have been raised 18 percent. Republicans and some Democrats screamed that those who work should receive more of an increase than those don't work. The target was to bring welfare recipients down to 10.5 percent. Assemblyman Bruce Young, a Democrat, carried a bill that would have eliminated all automatic cost-of-living increases that affect the budget each year. It was blocked by his fellow Democrats.

By this time, the fiscal year was starting. Lawmakers passed a bill authorizing the payment of bills without specific authorization. Controller Ken Cory refused to pay bills or employees without an actual budget. A Sacramento judge ordered him to pay up. He did. Back in the Legislature, there was eventual passage of a watered-down version of the Young bill to establish a new "California necessities index" for welfare increases. And the Assembly, by a vote of 55-24, passed the budget on July 10th with the understanding that the new index would cut welfare boosts to 13 percent. The Senate Republicans, however, held out for more under Campbell's leadership. Finally, the Senate on July 16th sent the budget to Brown's desk, putting an appropriations bill into effect later than ever before in state history. Brown used his blue pencil to cut a measly \$14 million from the budget.

Cutback in January?

After all these shenanigans, the total saving was about \$50 million — an insignificant number in a sea of billions. Or was there a saving? The Young bill does not go into effect until January. That means that welfare recipients will get the full increases — 15.5 or 18 percent — under the old law for the first half of the fiscal year. Will lawmakers sit still and allow more than two million Californians suffer a loss of income starting January 1st? Furthermore, there are those who contend that the new necessities formula in another year might give those on welfare even greater increases than under the consumer price index.

Twelve years ago, Californians adopted a constitutional amendment by the late Assemblyman Robert W. Crown designed to prevent the late passage of the budget. Legislators are sworn to uphold the constitution, but 11 of the last 12 years they have ignored the requirement that the budget be passed by June 15th. The start of the fiscal year on July 1st also has not prodded lawmakers into action. They seem to enjoy the "fiscal crisis" atmosphere that develops after July 1st. So what is the real deadline? This year it was believed to be the start of the Republican National Convention in Detroit. But Republican senators seemed willing to allow Ronald Reagan to be nominated for president without them. However, the convention was a definite factor in getting legislators to act. Assembly Minority Leader Carol Hallett was given a place on the program. She wasn't about to miss it. In fact, she shot a needle at Campbell as the Assembly was approving the budget. "They haven't come up with any alternatives over there," she said of Campbell and associates. "We've been asking them to for weeks."

But Campbell got what he wanted — time on television.

He accused Democrats of "economic insanity" because of the hard times ahead next year. The veteran Albert Rodda, finance committee chairman, responded that Campbell has been supporting measures (including Proposition 9) that would have put the state into even more precarious a position next year. Campbell demanded that automatic increases be ended and welfare grants be cut further.

In one Senate debate, Republican John Briggs threw books at Democrat Omer Rains. Some senators expressed concern that the legislative process was becoming a puppet show that was embarrassing the entire state government. Yet Briggs was placed on the second budget conference committee. The first consisted of Senators Campbell, Rodda and Democrat Alfred Alquist and Assemblymen John Vasconcellos and Dan Boatwright, both Democrats, and Republican Gordon Duffy. The second panel consisted of Briggs, Young, Democratic Senators John Garamendi and Bob Presley, and Assemblymen Eugene Chappie, a Republican, and Gary Hart, a Democrat. For several days, moderate Republican senators wanted to vote for the budget but were restrained by Campbell and Briggs.

The rest of the budget

With the budget being held hostage, several significant issues were virtually overlooked. Perhaps the most important was the establishment of a special reserve fund in a companion bill to avoid the necessity of refunding some \$350 million to the taxpayers under the provisions of last year's Proposition 4. The Legislature denied Brown's request for \$100 million for prison construction and gave him a small appropriation to handle lawsuits to circumvent Attorney General George Deukmejian. The public schools were given additional funds, and Alquist lost his attempt to prevent the Energy Commission from carrying out an anti-nuclear campaign in the courts. The abortion issue remains to be resolved by the State Supreme Court, even though lawmakers have sided with the right-to-life forces and the United States Supreme Court ruled that government can decline to provide abortions for the poor.

What was the overall impact of the marathon budget of 1980? Public employees knew they would be paid. Those who do business with the state knew the state would pay its bills. The general public didn't care. And the image of the California Legislature moved down another notch or two. 

READERS: We need your help

We've been deluged with complaints lately regarding late delivery of the *Journal*. We need your help to solve the problem.

This issue of the *Journal* was mailed in Sacramento Friday night or Saturday morning July 25th and 26th. This means, depending on where you live, you should have received this issue *no later than*:

Sacramento area: Wednesday, July 30

Bay area: Friday, August 1

Southern California: Saturday, August 2

If you did not receive your magazine by the appropriate date would you please tear out one of the BOOKS cards inserted in the magazine, write "mail survey" on the name line and your ZIP code and the date you received the magazine on the following lines. Mail the postage paid card to us and hopefully you will receive your copy more quickly next month as a result. Thank you for your help.

Dawn of the enforcement era for the Fair Political Practices panel

By JOE CISLOWSKI

The California Fair Political Practices Commission of the 1980s will bear little resemblance to the reform-driven agency created by the voters in the wake of Watergate. In the decade ahead, the emphasis will be on the enforcement of the laws and regulations that have survived the shakedown period since the people adopted the Political Reform Act of 1974 (Proposition 9).

Not only has the commission changed; so has the act itself. There are three main reasons:

- After five years of court challenges, the act has lost some of its strongest provisions, especially on campaign expenditure limits and lobbyist contributions.
- The Legislature has continued to tinker with the law — usually with commission support.
- Personnel turnover inside the commission and its

staff has produced some subtle differences. Many observers say the staff now is more realistic and less naive; others worry that both staff and commissioners are losing their watch-dog fervor.

During the '70s, the young commission clearly placed its emphasis on voluntary compliance, stressing education rather than punitive enforcement actions. Now, it has substantially increased its investigatory staff and has shed its reluctance to assess fines. A year ago, only two cases were ready for probable-cause determination; currently, there are two dozen such cases.

Yet the commission — after losing some major court battles — is downplaying its prohibition powers in favor of a focus on disclosure. "I think there was an awakening for the FPPC," says Commissioner Tony Quinn, "that this whole business of political reform was not as simple and as easy as they had thought it was. We have found few problems with the campaign reporting part of the law. Very few people question the idea that they should report their contributions and expenditures. After Watergate everyone was in agreement that you couldn't have people running around with bags of money."

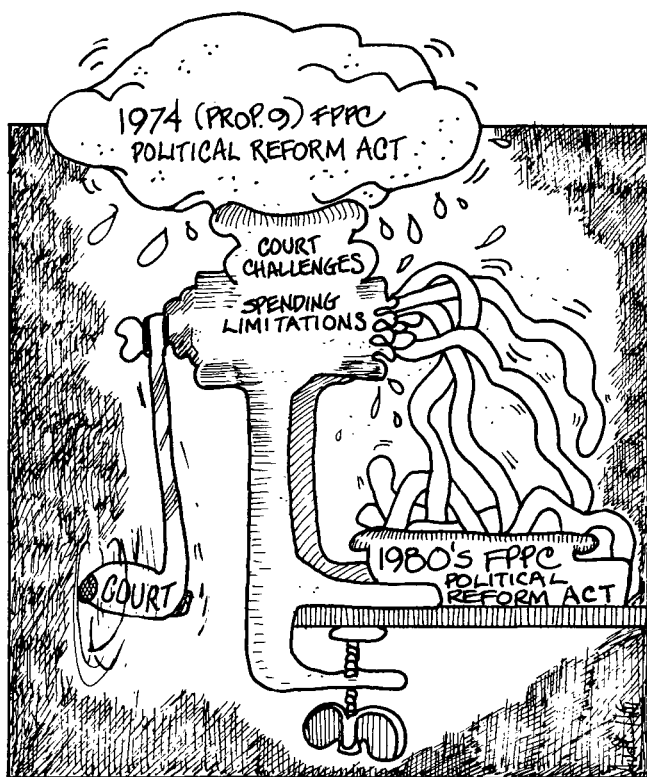
There has been much less agreement about limiting campaign costs and lobbyist contributions. In fact, FPPC Chairman Thomas Houston says the court rulings in those areas have been serious blows to political reform. As a result, he says, "We've seen some obscene things happen, especially in initiatives."

The campaign-spending section of the act was gutted when expenditure limitations were struck down by the U.S. Supreme Court in its 1976 *Buckley v. Valeo* decision. The opinion concerned spending limits in the Federal Election Campaign Act, but since the California Political Reform Act is so similar, the FPPC was also required to abolish its limits on candidate spending.

In the same year two other court challenges killed off spending limitations on initiatives. The California Supreme Court held spending limits on ballot measures unconstitutional in *Citizens for Jobs and Energy v. FPPC*. A few months later, the court struck down limits on the amount that could be spent to qualify an initiative (*Hardie v. Eu*).

The lobbyist provisions of the act have also fared badly. Disclosure requirements are intact, making it mandatory for paid lobbyists to disclose their funding sources and how they spend those funds. (Employers of lobbyists and others who spend \$250 or more a month attempting to influence legislative or administrative action are also required to file spending reports.) But the prohibition on lobbyists' campaign contributions was struck down by the state Supreme

Joe Cislowski prepared this article while assigned to the Journal from the UCLA internship program.



Court in its *Institute of Governmental Advocates v. Younger* decision. A prohibition on lobbyist gifts — no more than \$10 a month per official — remains on the books but its impact is slight. The major result is that lobbyists funnel their dollars into campaign contributions instead of wining and dining. Chairman Houston feels the *IGA vs. Younger* decision has increased the clout of lobbyists. He thinks that limitations rather than absolute prohibitions on lobbyist contributions might be held constitutional. But the Legislature would have to vote for such a change, and no one really expects legislators to limit a major source of their own campaign income.

In another area — conflict of interest — the Political Reform Act has survived court tests and achieved more impact than its authors probably expected. FPPC general counsel Robert Stern, a member of the commission staff since its formation, calls the conflict of interest section the sleeper of the entire law. It requires state and local officials to disclose their financial interests and to disqualify themselves from decisions that could affect those interests. Two state entities — the University of California Regents and the Commission on California State Government Organization and Economy (the Little Hoover Commission) — have unsuccessfully sued the FPPC to prevent their members' finances from being made public. The regents claimed they should be exempt because they delegate their decision-making powers; the Little Hoover commissioners cited their solely advisory role. Neither argument swayed the courts.

Loopholes and duck clubs

The Political Reform Act allows the Legislature to amend its provisions, as long as the legislation receives a two-thirds vote and furthers the act's purpose. Since 1974 the commission has often proposed legislation to alter the act, with varying degrees of success. At first legislators were skeptical of FPPC intentions, and the commission used to offer its proposals in packages that were too comprehensive. But recently the FPPC has improved its credibility with the Legislature and has been more successful in getting its bills passed. They fall into four categories:

- **Bills reducing the cost of implementing the act.**

Random audits and a bill repealing the publication of all lobbyist disclosure statements have saved the state about \$2 million, according to the FPPC.

- **Bills reducing unnecessary paperwork.** Legislation has allowed the FPPC to consolidate campaign statements, change filing deadlines to consistent schedules and raise the minimum level of campaign reporting.

- **Bills closing loopholes.** One such change requires that an intermediary of a gift disclose the true source of the gift to the recipient, who then is required to disclose both the donor and the intermediary.

- **Bills to eliminate personal use of campaign funds.**

Public officials have used campaign funds for such items as condominium furniture and duck club memberships. Present law allows candidates to apply campaign funds for personal use as long as they report it in their income-tax returns. A FPPC-supported bill, introduced by Assemblyman Bill McVittie, would have banned such use had it passed. A milder bill by Assembly Speaker Leo McCarthy, prohibiting the acceptance of campaign funds for personal use except upon retirement, has a little better chance of passing.

Change at the top

Within the FPPC, major leadership changes occurred last year. Houston replaced Daniel Lowenstein as full-time commission chairman and, at about the same time, Ted Prim succeeded the first executive director, Michael Bennett. Lowenstein, one of the principal authors of the Political Re-



form Act, was a more public person than Houston is. Because he attracted so much attention, Lowenstein was also controversial and had his share of critics.

One of them is Commissioner Patricia Lapan, who says she feels an author of the law was a poor choice for the FPPC chairmanship.

"People always have to justify what they've done," she says. "They like to take pride in the fact that they haven't wasted their time. If you step on anything they've done you're stepping on their ego, and they take criticism poorly. It's just like my telling you that your baby's ugly."

Lapan said she sees change resulting from the staff turnover, especially a "united-front" approach by Houston and Prim. She claims their predecessors expressed opposing opinions at times, which sparked healthy debate on the commission. Other FPPC observers perceive other differences in the commission and its staff. Among them:

- "Lately, it seems the commission has had a conservative thrust," says Walter Zelman, executive director of California Common Cause. "There has been a reluctance to stand up for political reform."

- Allan Tebbetts, an attorney who represents many registered lobbyists and who has observed the FPPC since its inception, says he feels the commission is becoming less preoccupied with the reform law's intent and "more familiar with their statute. They have become more flexible and are able to tailor their rulings to the real world," Tebbetts says.

- Former Commissioner Anthony Miller, now chief counsel to Secretary March Fong Eu, says, "The staff has been increasingly realistic about the limitations of both the act and the commission. I think there is now a better understanding of the limitations of reforming government in California. There was a great deal of zealotry with the initial staff, based on a certain naivete as to political reform."

Potential problems

Chairman Houston worries aloud about three potential areas of trouble for the commission's future. He foresees a real danger of the commission being unduly influenced by

those it regulates. The FPPC must guard against the pattern of other regulatory commissions which began as reform agencies and gradually became pawns in the hands of the industries or professions they were designed to regulate, he says.

During its public meetings, the commission seldom hears from civic groups such as the League of Women Voters or Common Cause, or from individual members of the public, according to Houston. Instead, he says, it mostly gets complaints from officeholders, candidates, lobbyists and their attorneys.

Houston also fears that commission reports may get less media exposure in the future, partly because the press shows increasing signs of treating lobbying and campaign summaries as "old hat," no longer newsworthy. Few reporters take the time to analyze FPPC information or the specific impacts which contributions and/or lobbying activities are having on government decisions, Houston says.

Finally, he cites the danger of an increasingly turned-off and frustrated electorate. "We may be in an era in which the public is beginning to take government ineptitude or incompetence for granted," he says. "Rather than becoming involved and working for programs and pieces of legislation

The commission's cast:

The Fair Political Practices Commission is a five-member appointive board. No more than three of its members may be from the same political party. The governor appoints two members (not of the same party); the attorney general, secretary of state and controller each appoints one.

The commission investigates charges of possible violations of the Political Reform Act on the part of agencies, public officials and candidates. It may subpoena records and witnesses, issue cease-and-desist orders and levy fines up to \$2,000.

Here are the FPPC members, their appointing officers and the year their terms expire:

Chairman Thomas Houston (*Governor Brown*), 1983.

Colleen McAndrews (*Governor Brown*), 1983.

Art Metzger (*Controller Ken Cory*), 1981.

Patricia Lapan (*Secretary of State March Fong Eu*), 1981.

Tony Quinn (*former Attorney General Evelle Younger*), 1981.

they support, they are evacuating that arena and concentrating instead on draconian initiative measures such as Proposition 13 and Jarvis II. Every time we put out a campaign report which shows an ever-decreasing percentage of the pie coming from individuals and small contributors and an increasing part of the pie coming from special-interest groups, the public just yawns. They may have come to accept the disproportionate power such interests wield and, therefore, have concluded that the only solution is to get rid of a major chunk of government."

Friends and critics

Friends and critics of the commission are equally willing to add to Houston's list of potential problems:

- Can the FPPC enforce its rules aggressively without blowing minor misconduct out of proportion? Former Commissioner Miller feels the commission is "trying very hard to justify its existence and warns that technical errors in reporting may produce overreaction by the FPPC. "Enforcement is needed if there are violations, but grandstanding doesn't serve the commission well," Miller says.

- Is campaign reporting procedure so complicated that grass-roots participation is being discouraged? The FPPC has sponsored AB 1486 to make forms simpler and more timely, and several commissioners favor raising campaign-reporting thresholds to ease the burden on local candidates and committees.

"There is so much volume that people can't find the really important material," Commissioner Quinn says. Many files are duplicative and unimportant, and some multi-campaign committees must file 20 to 30 times per year in many different places, he adds. Ex-Commissioner Miller agrees: The requirements' burdens are "simply another nail in the coffin," of grass-roots political participation in California, he insists.

- Should the FPPC adopt an activist, educational posture and push for additional reforms — or should it define its job narrowly and stick with enforcement and reporting duties?

Secretary of State March Eu's past and present FPPC appointees, Miller and Lapan, are opposed to expanding the commission's role into such areas as public hearings.

"I think the commissioners' role is a narrow one and they should confine themselves to the act and its implementation, Miller says. "Bureaucracies grow because they find new things to do in order to justify their existence. The temptation is there and the commission should fight that temptation."

Ex-Chairman Lowenstein insists that the FPPC must remain in "the vanguard of political reform" if it is to continue to attract talented and creative people and avoid becoming just another bureaucracy.

"I have said at various times that the commission will probably become an encrusted bureaucracy that will, probably with a narrow view, enforce this particular act," Lowenstein says. "To a large extent it's just a question of how long that can be fended off. I wouldn't want to say it's inevitable; I think it's probable. The best you can hope for is that, even when it gets to that stage, occasionally there is leadership that rejuvenates it for a period."

Common Cause's Zelman is concerned that commission appointments are becoming more conservative. With a different chairman, Zelman says, the FPPC could become solely an enforcement mechanism that fails to push for further reforms. The next step would be for enforcement to decline also. "You need a certain courage to enforce this act aggressively against powerful people and to take the flack that comes down when you do enforce it," Zelman says.

Ex-Commissioner Miller wants a more limited definition of FPPC's future. "I'm not sure we need an agency to probe further into what political reform should be," he says. "That's a legislative function. Initially, the reform act was such a great baby, and all these reformers throughout the United States wanted to join the staff to knock heads and to clean up government in California," Miller says. "Those people left, and maybe just as well, because they brought a certain overzealousness. They expected to find people on the take routinely, and all this dirt. That kind of corruption just doesn't exist in California, so they became demoralized. Most of them finally left. It's possible to find dedicated people who stick with the mandates of the act."

Lapan, Eu's current appointee, is even less enthused about an activist commission. "I don't think that if the commission disappeared tomorrow, we would regress," she says. "I think, having made several steps forward in the area of disclosure and disqualification, that (progress) would be perpetuated. I think that's where the thrust of political reform really is.

"Having lived with this act for five years," Lapan says, "and if I knew then what I know today, I would have worked to have it scrapped."

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—Newsmakers—

Lincoln and Douglas

Within a period of three days, death took three well-known figures on the California political scene. Former Congresswoman **Helen Gahagan Douglas**, who lost to Richard Nixon in a heated Senate race, died in New York at 79. Former Assembly Speaker **Luther H. (Abe) Lincoln** died in Walnut Creek at 65. A Republican representing Oakland, he served as speaker in the late '50s. **Carey McWilliams**, long-time editor of *The Nation* magazine and author of *California: The Great Exception* as well as other books about the state, died in New York at 74. Also deceased: **Robin Cranston**, 32-year-old son of Senator Alan Cranston, and **Roger Kent**, 73, former Democratic state chairman.

Gene Rhodes, former mayor of Fremont in Alameda County, agreed

to pay a \$75,000 penalty for failing to disclose \$2.8 million in real estate interests. It is the largest penalty ever assessed by the Fair Political Practices Commission. Supervisor **Quentin Kopp** of San Francisco was fined \$2,000 for accepting an illegal cash contribution . . . The state Franchise Tax Board initiated an audit of the fund-raising activities of Los Angeles city councilman **Arthur K. Snyder** . . . **Jonathan C. Lewis** resigned as executive director of the California Tax Reform Association to open a consulting firm in Sacramento.

Former state Finance Director **Roy M. Bell** retired from state government following 34 years as a civil servant and career executive . . . **Josiah Beeman** resigned as the Brown Administration representative in Washington with the declaration that Jerry

Brown will never be elected president by appealing to the "swami vote." . . . **Barbara Metzger** resigned as Brown's press secretary to accept a staff post with Assemblyman Willie Brown . . . **Russell Cahill** resigned as state director of parks and recreation.

Appointments: **Gerald Goldberg**, Missouri's director of revenue, as executive officer of the state Franchise Tax Board . . . **Peter Dangermond Jr.**, head of the Monterey County parks department, to succeed Cahill . . . **Douglas X. Patino** of Sacramento as director of the Employment Development Department . . . **Alice Huffman** of Sacramento as director of the Office of Economic Opportunity . . . **Gene Livingston** of Davis as director of the new Office of Administrative Law.

Canal without cash

While the Legislature was playing the usual game of partisan charades with the state budget in early July, it tackled an issue of greater long-range significance: the proposed Peripheral Canal around the Sacramento-San Joaquin Delta. After years of attempting to win approval for the project, southern legislators finally steered a bill to the desk of Governor Jerry Brown authorizing construction of the canal and other water projects. Noticeably absent from the bill: funding for the massive program, estimated to cost at least \$5 billion and perhaps as much as \$23 billion, including interest.

Brown kept legislators waiting for a signature on the measure while a related bill placing water-conservation regulations on the state's farmers was being debated. Earlier, the path for passage of the authorization bill (SB 200 by Senator Ruben Ayala) was cleared through the placement of a canal measure on the November ballot. That proposition, authored by Assemblyman Lawrence Kapiloff, would provide environmental protections to the north and attempt to accelerate court proceedings on anticipated challenges to the project from ecology organizations.

Many voters may be confused by the Kapiloff measure. A northerner opposed to the project must choose between voting no to register a protest against the project or yes to provide environmental controls. A southerner in favor of the

canal can vote no to remove northern protections or yes to endorse the program.

Other subjects being tackled by the Legislature prior to the summer recess:

- Lawmakers approved a flexible mortgage bill sponsored by the savings and loan industry and authored by Senator John Foran. Consumer organizations opposed the bill on the ground that it may result in some borrowers losing their homes. The savings and loan associations claim a flexible mortgage system is needed in times of rapidly fluctuating interest rates. The bill allows interest rates to be changed every six months but they could not be increased more than 5 percent over the life of a loan.

- Lawmakers placed on the November ballot a plan to make a change in the Jarvis-Gann property tax initiative. The constitutional amendment would allow property taxes to be increased to pay off general-obligation bonds approved by two-thirds vote of the electorate. (Also placed on the ballot by initiative: a measure to restrict smoking in public buildings.)

- Assemblyman Louis Papan was unsuccessful in his attempt to place a measure on the ballot to limit any governor to two terms. He did lead a successful campaign, however, to kill a resolution that would have allowed the California Highway Patrol to use radar.

Senate (23D,17R)	SB 1426 AB 2982 SB 624 SB 1756 ACA 90	SB 1931 SCA 44 ACA 74 AB 1342 AJR 4		SB 1426 AB 2982 SB 624 SB 1756 ACA 90	SB 1931 SCA 44 ACA 74 AB 1342 AJR 4
Alquist (D)	Y Y Y Y N	* * Y Y N	Montoya (D)	N * Y Y Y	Y Y N Y Y
Ayala (D)	Y * Y Y Y	Y Y Y Y Y	Nejedly (R)	N Y Y Y Y	* Y Y * *
Beverly (R)	Y Y Y N Y	Y Y Y Y N	Nielsen (R)	Y Y Y Y *	Y Y Y Y N
Briggs (R)	N Y N N *	* Y Y Y N	Nimmo (R)	N Y Y Y N	Y * Y N N
Campbell (R)	N Y N N *	Y * Y * N	O'Keefe (R)	* Y Y N Y	Y Y Y N N
Carpenter (D)	Y N Y Y N	Y * * Y N	Petris (D)	Y * Y Y Y	* Y N * Y
Craven (R)	Y Y N Y Y	Y Y Y Y N	Presley (D)	N Y Y Y Y	N N Y N Y
Cusanovich (R)	Y Y N N Y	Y Y Y N N	Rains (D)	Y Y * Y Y	Y N N Y Y
Dills (D)	Y N Y Y Y	N Y Y Y Y	Richardson (R)	N Y N N Y	* N Y * N
Foran (D)	Y N Y N Y	N N Y N N	Robbins (D)	Y * Y Y *	Y Y Y * Y
Garamendi (D)	Y N Y Y Y	Y N Y * Y	Roberti (D)	Y Y Y Y Y	N Y N Y Y
Garcia, A. (D)	Y Y Y * Y	* Y Y Y Y	Rodda (D)	Y N Y Y Y	* * N Y Y
Garcia, M. (R)	Y Y Y Y Y	Y Y Y N N	Russell (R)	N Y * Y Y	Y Y Y N N
Greene (D)	Y N * * Y	* Y N Y Y	Schmitz (R)	N Y N N Y	N Y Y N N
Holmdahl (D)	Y Y Y Y N	N Y N N Y	Sieroty (D)	Y N Y Y Y	Y Y * Y Y
Johnson (R)	Y Y N Y Y	Y Y Y Y N	Speraw (R)	* Y N N Y	Y Y Y N N
Keene (D)	Y * Y Y Y	Y Y Y Y Y	Stiern (D)	Y Y Y Y N	N Y Y * N
Maddy (R)	Y Y N Y N	* Y Y * N	Vuich (D)	* Y N Y N	Y Y Y Y N
Marks (R)	Y N Y Y Y	Y N * Y Y	Watson (D)	Y N Y Y Y	Y Y * * Y
Mills (D)	Y N Y Y Y	Y N Y Y Y	Wilson (D)	N Y Y Y Y	Y Y Y Y N

VOTING RECORDS

Listed here are the votes of legislators on recent major roll calls through mid-July. Votes selected involve issues of major importance and issues on which there was a major division of opinion, or both.

Y — Yes **N — No**
*** — Absent or not voting**

A 2/3 vote is required for urgency measures, constitutional amendments, and appropriations.

Assembly: 41 votes required for passage of bills needing a simple majority. (2/3 = 54 votes)

Senate: 21 votes required for passage of bills needing a simple majority. (2/3 = 27 votes)

Senate

SB 1426 (Rodda) — Transfers \$600 million to a special reserve fund for capital expenditures as a means of circumventing provisions of Proposition 4 of 1979. Passed, 27 - 10.

AB 2982 (Young) — Repeals automatic cost-of-living increases in state law. Passed 24 - 11.

SB 624 (Nejedly) — Submits \$285 million park bond plan to voters. Passed, 27 - 10.

SB 1756 (Garamendi) — Submits \$85 million Lake Tahoe land acquisition bond is-

sue to voters. Passed, 29 - 9.

ACA 90 (Kapiloff) — Proposed constitutional amendment establishing environmental protections for Northern California should the Peripheral Canal be constructed. Passed, 29 - 7.

SB 1931 (M. Garcia) — Conforms state income tax to the federal system and creates income-tax credit for senior citizens. Passed, 24 - 7.

SCA 44 (Johnson) — Proposed constitutional amendment exempting from taxation any property under a state development moratorium. Passed, 28 - 7.

ACA 74 (Ingalls) — Proposed constitutional amendment limiting use of gasoline sales taxes to transportation purposes. Passed, 29 - 7.

AB 1342 (Elder) — Allows public-employee retirement funds to be used to help finance homes for public employees. Passed, 21 - 10.

AJR 4 (M. Waters) — Resolution ratifying proposed amendment to the United States Constitution to grant the District of Columbia representation in Congress. Failed, 18 - 21.

Assembly

AB 2982 (Young) — Repeals automatic cost-of-living increases under state law. Defeated, 35 - 38.

SB 1426 (Fodda) — Transfers \$600 million to a special construction fund as a means of circumventing a provision of the "Spirit of 13" initiative. Passed, 57 - 15.

AB 2164 (N. Waters) — Requires New Melones reservoir to be filled to capacity. Attempted override of governor's veto failed, 38 - 30 (54 votes required).

ACA 90 (Kapiloff) — Proposed constitutional amendment designed to protect the northern environment should the Peripheral Canal be built. Passed, 56 - 20.

SB 200 (Ayala) — Authorizes construction of the Peripheral Canal and other water projects. Passed, 50 - 28.

SB 1756 (Garamendi) — Places \$85 million Lake Tahoe land acquisition bond plan on November ballot. Passed, 55 - 16.

ACA 74 (Ingalls) — Proposed constitutional amendment to limit use of gasoline sales taxes to transportation purposes. Assembly rejects Senate amendments, 47 - 22 (54 votes required).

AB 2988 (Rogers) — Requires that every applicant for a driver's license provide a fingerprint. Passed, 47 - 19.

AB 3431 (Levine) — Prohibits public officials from accepting campaign contributions or gifts if there is a conflict of interest. Defeated, 35 - 32 (41 votes required).

ACA 68 (Papan) — Proposed constitutional amendment limiting governors to two terms. Defeated, 22 - 51.

Assembly (50D, 30R)	AB 2982 SB 1426 AB 2164 ACA 90 SB 200	SB 1756 ACA 74 AB 2988 AB 3431 ACA 68	AB 2982 SB 1426 AB 2164 ACA 90 SB 200	SB 1756 ACA 74 AB 2988 AB 3431 ACA 68
Agnos (D)	N Y N Y N	Y Y Y * N	Y N Y * Y	N Y Y N Y
Alatorre (D)	N Y N Y Y	Y N N Y N	N Y N Y N	Y Y N N *
Bane (D)	N Y Y Y Y	N * Y Y N	Y Y Y N Y	* Y Y N N
Bannai (R)	Y * Y Y Y	Y Y Y N N	* Y Y N Y	Y Y Y Y N
Bates (D)	N Y N Y N	Y N Y Y *	Y Y Y N Y	N Y Y N N
Bergeson (R)	Y Y Y Y Y	Y Y Y N Y	N Y N Y Y	Y * N Y N
Berman (D)	N Y N Y Y	Y N Y Y N	N Y N Y N	Y N N Y N
Boatwright (D)	N Y N Y N	Y N N Y N	Y Y N Y Y	* Y Y Y N
Bosco (D)	N Y * Y N	Y Y Y Y N	Y Y Y Y Y	Y Y * Y N
Brown, D. (R)	Y N Y N Y	N Y N N N	N Y * Y *	Y * N * Y
Brown, W. (D)	N Y N * N	* * Y N N	N Y N Y Y	Y N N N N
Calvo (D)	N Y N Y N	Y N N Y N	Y * * Y N	Y * Y * N
Chacon (D)	N Y N Y Y	Y N Y Y N	* * * * Y	* * * * *
Chappie (R)	Y * Y N N	N Y Y N *	N Y Y N N	Y Y Y Y N
Cline (R)	Y N Y Y Y	N Y * N N	* Y * Y N	Y N Y Y N
Costa (D)	Y Y Y N Y	Y Y Y N N	Y N Y N Y	N Y N N Y
Deddeh (D)	N Y N Y Y	Y Y Y * N	Y N Y N Y	Y Y * Y Y
Duffy (R)	Y Y Y N N	* * Y Y Y	* * Y Y Y	* Y * N Y
Egeland (D)	N Y N Y N	Y N * N N	Y * Y Y Y	N Y Y N N
Elder (D)	Y N Y Y Y	* Y Y * N	* N Y Y N	Y * * N Y
Ellis (R)	Y Y Y Y Y	N Y Y N Y	N Y Y N N	N Y Y * N
Felando (R)	Y N Y Y Y	N Y Y Y Y	Y * * Y *	N N N N Y
Fenton (D)	N Y N Y Y	Y * * N N	N Y * Y Y	N Y N Y N
Filante (R)	Y Y N Y N	Y Y Y Y Y	Y N Y N Y	* Y Y N Y
Frazee (R)	Y Y Y Y Y	N Y Y Y Y	N Y Y Y Y	Y N Y * N
Gage (D)	N Y N Y N	Y N * Y N	N Y N Y Y	Y N N * N
Goggin (D)	N Y N Y Y	Y Y Y * N	Y Y Y Y Y	Y Y Y Y N
Greene (D)	N Y Y Y N	Y N N N N	Y * Y N N	Y Y Y N N
Hallett (R)	Y N Y N N	Y Y Y N Y	Y Y Y N Y	* Y Y N Y
Hannigan (D)	N Y N N N	Y N * Y N	N Y N Y Y	Y Y N N *
Harris (D)	N Y N Y N	Y N Y Y N	N Y Y N N	Y Y Y Y N
Hart (D)	* Y N Y N	Y Y Y Y N	N Y * Y Y	Y * * Y N
Hayden (R)	Y Y N N N	Y N Y Y Y	N Y N Y Y	* N N N N
Hayes (R)	Y N * Y Y	Y Y N Y Y	N Y N Y Y	Y N * Y N
Hughes (D)	N Y N Y Y	Y N * N N	N Y * Y Y	Y Y Y * N
Imbrecht (R)	Y Y N Y Y	Y Y Y Y Y	N Y * Y Y	Y N N N *
Ingalls (D)	Y Y Y Y Y	Y Y Y N N	Y N Y N N	Y Y Y N N
Ivers (R)	Y N Y N Y	Y N N * Y	* Y * Y Y	Y Y Y Y Y
Johnson (R)	Y N Y * Y	* Y * Y Y	Y N Y N Y	N Y Y N N
Kapiloff (D)	N Y N Y Y	Y Y Y * *	Y N Y Y Y	Y * Y Y N
Kelley (R)	Y N Y * Y	N Y Y N Y	Y N Y * Y	N Y Y N Y
Knox (D)	N Y N Y N	Y Y N N *	N Y N Y N	Y Y N N *
Lancaster (R)	Y Y Y N Y	* Y Y N N	* Y Y N Y	Y Y Y N N
Lehman (D)	* Y Y N Y	Y Y Y Y N	Y Y Y N Y	N Y Y N N
Leonard (R)	Y Y Y N Y	N Y Y N N	Y Y Y N Y	N Y Y N N
Levine (D)	N Y N Y Y	Y * N Y N	N Y N Y Y	Y * N Y N
Lockyer (D)	N Y N Y N	Y N N Y N	N Y N Y N	Y N N Y N
Mangers (D)	Y Y N Y Y	Y Y Y Y N	Y Y N Y Y	Y Y Y Y N
McAlister (D)	Y Y Y Y Y	Y Y * Y N	Y Y Y Y Y	Y Y * Y N
McCarthy (D)	N Y * Y *	Y * N * Y	N Y * Y *	Y * N * Y
McVittie (D)	N Y N Y Y	Y N N N N	N Y N Y Y	Y N N N N
Mello (D)	Y * * Y N	Y * Y * N	Y * * Y N	Y * Y * N
Moore (D)	* * * * Y	* * * * *	* * * * Y	* * * * *
Moorhead (R)	N Y Y N N	Y Y Y Y N	N Y Y N N	Y Y Y Y N
Mori (D)	* Y * Y N	Y N Y Y N	* Y * Y N	Y N Y Y N
Mountjoy (R)	Y N Y N Y	N Y N N Y	Y N Y N Y	N Y N N Y
Naylor (R)	Y N Y N Y	Y Y * Y Y	Y N Y N Y	Y Y * Y Y
Nestande (R)	* * Y Y Y	* Y * N Y	* * Y Y Y	* Y * N Y
Nolan (R)	Y * Y Y Y	N Y Y N N	Y * Y Y Y	N Y Y N N
Papan (D)	* N Y Y N	Y * * N Y	* N Y Y N	Y * * N Y
Perino (D)	N Y Y N N	N Y Y * N	N Y Y N N	N Y Y * N
Priolo (R)	Y * * Y *	N N N N Y	Y * * Y *	N N N N Y
Robinson (D)	N Y * Y Y	N Y N Y N	N Y * Y Y	N Y N Y N
Rogers (R)	Y N Y N Y	* Y Y N Y	Y N Y N Y	* Y Y N Y
Roos (D)	N Y Y Y Y	Y N Y * N	N Y Y Y Y	Y N Y * N
Rosenthal (D)	N Y N Y Y	Y N N * N	N Y N Y Y	Y N N * N
Ryan (R)	Y Y Y Y Y	Y Y Y Y N	Y Y Y Y Y	Y Y Y Y N
Satham (R)	Y * Y N N	Y Y Y N N	Y * Y N N	Y Y Y N N
Stirling (R)	Y Y Y N Y	* Y Y N Y	Y Y Y N Y	* Y Y N Y
Tanner (D)	N Y N Y Y	Y Y N N *	N Y N Y Y	Y Y N N *
Thurman (D)	N Y Y N N	Y Y Y Y N	N Y Y N N	Y Y Y Y N
Torres (D)	N Y * Y Y	Y * * Y N	N Y * Y Y	Y * * Y N
Tucker (D)	N Y N Y Y	* N N N N	N Y N Y Y	* N N N N
Vasconcellos (D)	N Y N Y Y	Y N * Y N	N Y N Y Y	Y N * Y N
Vicencia (D)	N Y * Y Y	Y Y Y * N	N Y * Y Y	Y Y Y * N
Waters, M. (D)	N Y * Y Y	Y N N N *	N Y * Y Y	Y N N N *
Waters, N. (D)	Y N Y N N	Y Y Y N N	Y N Y N N	Y Y Y N N
Wray (D)	* Y * Y Y	Y Y Y Y Y	* Y * Y Y	Y Y Y Y Y
Wyman (R)	Y N Y N Y	N Y Y N N	Y N Y N Y	N Y Y N N
Young (D)	Y N Y Y Y	Y * Y Y N	Y N Y Y Y	Y * Y Y N

The outlook for women, minorities, write-in candidates

California's 43-member delegation to the House of Representatives probably will no longer be an all-male bastion following November's election. Two women — Democrat Norma Bork and Republican Bobbi Fiedler — are considered good bets to defeat incumbent congressmen this year. Bork is running against Republican Don Clausen on the north coast, and Fiedler is chasing Democrat James Corman in the San Fernando Valley. Another woman, Democrat Anne Cerney of Lodi, is considered a longshot possibility against freshman Republican Norm Shumway of Stockton.

In the Legislature, there is only one chance for election of a third female senator — Rosemary Woodlock, who is the underdog against Republican Ed Davis

where Los Angeles and Ventura counties meet. But the outlook is much better in the Assembly, where nine of the 80 members now are women. One incumbent, Leona Egeland, did not seek re-election. But her place will be taken by the winner of the 37th District contest between Democrat Arline Mathews and the favored Republican Cathie Wright. The GOP's Marian LaFollette is expected to win in the 38th District, bringing the total to 10. And there are three other possibilities: Anne Charles in Marin County, Doris Allen in Orange County and Sharon King-Jeffers in Riverside. All three are running against incumbents.

The outlook for minorities: A fourth black, Mervyn Dymally, will be added to the congressional delegation. One

Hispanic, Marty Martinez, will become the fourth member of the Chicano caucus in the Assembly, and Louis Dominguez has a chance against a Republican incumbent in the San Pedro area.

Democrats both

Two write-in candidates won places on the November ballot, Republicans Fay Adams and Paul Robinson. Adams is challenging Democratic Senator Rose Ann Vuich of Delano, and Robinson is testing Democratic Assemblyman Dave Elder of Long Beach. The incumbents are considered safe. Two other incumbents won the nomination of two parties, Republican Senator Milton Marks of San Francisco, and GOP Assembly leader Carol Hallett of Atascadero.

CHARTING THE LEGISLATURE

The following is a list of significant bills pending before the Legislature in mid-July:

SUBJECT	BILLS	DESCRIPTION	STATUS
CAMPAIGN REFORM	AB 2222 (McCarthy)	Prohibits the personal use of campaign funds by former officeholders.	<i>Defeated in Senate Elections and Reapportionment Committee.</i>
	AB 2536 (Calvo)	Limits campaign contributions to legislative candidates and restricts contributions from persons or firms with business pending before the Legislature.	<i>Defeated in Assembly Elections and Reapportionment Committee.</i>
CHILD-ABUSE	SB 781 (Rains)	Revises child-abuse reporting requirements and authorizes specified medical treatment of child-abuse victims without parental consent.	<i>Assembly Ways and Means Committee.</i>
	AB 781 (Egeland)	Provides that child-abuse reporting laws do not apply to specified acts of consensual sexual conduct.	<i>On Senate floor.</i>
CRIMINAL JUSTICE	AB 1374 (Felando)	Opens juvenile court proceedings to the press and public in cases involving serious offenses.	<i>Signed by governor.</i>
	SB 1849 (Maddy)	Enacts California Anti-Racketeering Act which makes it a felony to use monies derived from businesses used in racketeering operations.	<i>Defeated by Assembly Criminal Justice Committee.</i>
	SB 1877 (Presley)	Increases penalties for spousal and child beating and revises provisions of the Determinate Sentencing Act of 1976.	<i>Assembly Ways and Means Committee.</i>
DRIVING OFFENSES	SCR 55 (Maddy)	Authorizes the California Highway Patrol to use radar to enforce speeding laws.	<i>Defeated by Assembly Rules Committee.</i>
EDUCATION	ACA 93 (Leonard)	Constitutional amendment to prohibit the University of California from increasing tuition or student fees without legislative approval.	<i>Assembly Constitutional Amendments Committee.</i>
ENVIRONMENT	SB 778 (Keene)	Creates new Energy Conservation and Development Agency, a Department of Energy, revises powers and functions of the State Energy Commission and revises state energy regulatory powers.	<i>Defeated in Assembly Ways and Means Committee.</i>
	SB 1205 (Roberti)	Enacts Energy Conservation and Development Act of 1980. Creates California Energy Development Authority to administer programs for the development of energy conservation technologies.	<i>Assembly Ways and Means Committee.</i>
	SB 1465 (Garamendi)	Imposes civil penalties of up to \$25,000 for withholding information relative to the discharge of hazardous waste and imposes additional penalties for violations of laws regulating the discharge of hazardous substances.	<i>On governor's desk.</i>
FAMILY LAW	SB 1698 (Wilson)	Eliminates court appearances in most uncontested divorces.	<i>Signed by governor.</i>
	AB 3311 (McVittie)	Gives judicial preference to court cases involving a contested issue of child custody.	<i>On Senate floor.</i>
	AB 179 (Ellis)	Limits the confidential marriage procedure to persons who have been living together as husband and wife.	<i>On Senator floor.</i>
HEALTH CARE	SB 1580 (Campbell)	Legalizes the dispensing of laetrile and amygdalin for the treatment of cancer under specified conditions.	<i>Assembly Ways and Means Committee.</i>
	SB 125 (Garamendi)	Requires the establishment of training standards, approval of training programs, and the certification of pre-hospital emergency medical-care personnel.	<i>Assembly Ways and Means Committee.</i>
TAXATION	AB 2001 (Bergeson)	Enacts permanent state income tax indexing.	<i>Vetoed by governor.</i>
	AB 2092 (Deddeh)	Major inheritance tax reform bill: Exempts all property transferred to a surviving spouse from inheritance and gift taxes.	<i>Signed by governor.</i>
	SCA 46 (Speraw)	Constitutional amendment which amends Proposition 13 to prohibit the reassessment of residential property upon a change of ownership.	<i>Assembly Revenue and Taxation Committee referred for interim study.</i>

By DAVID HOFFMAN

Reagan and The West

It seems unlikely that the western states will be much of a battleground for the presidency this fall. Ronald Reagan has always been popular in the Far West and Jimmy Carter has never been. Yet, while most of the attention in the 1980 campaign will be focused on the industrial states of the Northeast and Carter's native South, the future of a vast federal empire in California and the West depends heavily on the outcome. At stake are natural resources in land, water, forests and minerals controlled by the federal government — a total of 544 million acres in 12 states — and how they will be managed in the years ahead.

SINCE THE EARLY days of his presidency, Carter has charted a new and unpopular course in federal policy toward the West. He challenged the long-held assumption that special interests could cheaply exploit such huge federal investments as reclamation projects. Within weeks after his inauguration came the first shock waves — the "hit list" of water projects. For California, the assault from Washington was particularly bitter. First came the effort to strictly enforce the 150-acre limitation and break up sprawling federally irrigated farms, most of which were located in the lush Central and Imperial Valleys. Later, the Carter Administration fought successfully to slow the tide of federal subsidies that had flowed to California growers in the form of below-cost federal irrigation water.

Interior Secretary Cecil D. Andrus turned a cold shoulder on Governor Jerry Brown's plan to build the Peripheral Canal, and he pledged to help protect the Sacramento-San Joaquin Delta. Andrus took the view that it was his mission to protect federal resources in the West from the ravages of exploitation by special interests — ranchers, cattlemen, growers, mining and energy companies — and he recruited assistants with similar views. From the top down, Andrus sought to break the traditionally close alliance between federal agencies and the western interests they were supposed to regulate.

At the White House, they listened when conservationists talked — as evidenced by Carter's decision to protect 96

million acres of Alaskan lands from development when Congress failed to act. After years on the outside, environmental leaders suddenly found themselves inside the gates at 1600 Pennsylvania Avenue. And on Capitol Hill, mavericks such as California Democrat George Miller found they had the backing of Andrus and the White House when it came to challenging powerful senior colleagues in the House such as B. F. (Bernie) Sisk and Harold T. (Bizz) Johnson, who had so long had the last word on reclamation policy.

What direction will Reagan chart for the West if he defeats Carter this fall? During his campaigns for governor, Reagan was no environmental crusader, but his administration compiled an environmental record that was better than his critics had feared. He stopped the Dos Rios Dam on the Middle Fork of the Eel River, and he opposed the Minarets Road highway project that would have marred the scenic John Muir trail in the High Sierra. His cabinet included the respected resources secretary, Norman (Ike) Livermore, a lumberman who was also a Sierra Club member.

Yet it seems unlikely that this pattern will be repeated if Reagan moves into the White House. Certainly, much of the original fervor that made Reagan's moves popular in the early 1970s has dissipated today. Instead of Earth Day, there is an energy crisis, and throughout the 1980 campaign Reagan has talked about opening up massive new exploration for oil and natural gas in the western states and in the Alaskan wilderness. He has derided the "environmental extremists" and he jokes: "They won't even let you build a house unless it looks like a bird's nest."

No one is more sensitive to the frustrations of the West than Senator Paul Laxalt, the Nevada Republican who is Reagan's campaign chairman. "The West is looking for a friend in the White House," he says, touting Reagan as a "true Westerner" who would balance development against preservation. Laxalt is a leader in the Sagebrush Rebellion, a movement that has swept some western states seeking more control over federal lands. Reagan has endorsed the drive, telling one Salt Lake City audience: "Count me in as a rebel." In a Reagan Administration, Laxalt would be a top choice for Interior Secretary, and instead of environmentalists Reagan would turn to corporate executives to manage the West's resources.

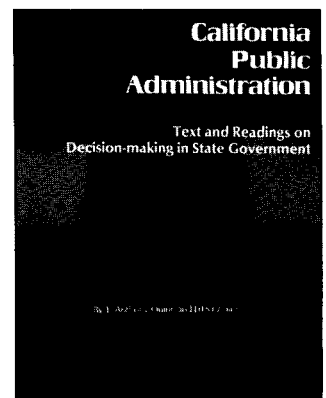
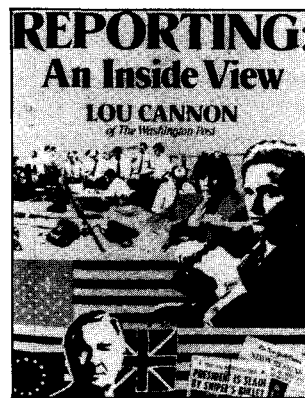
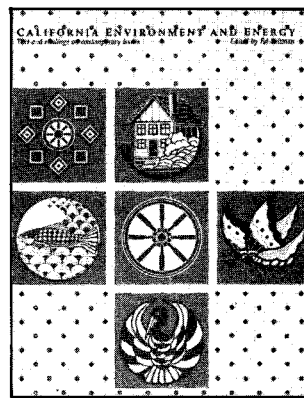
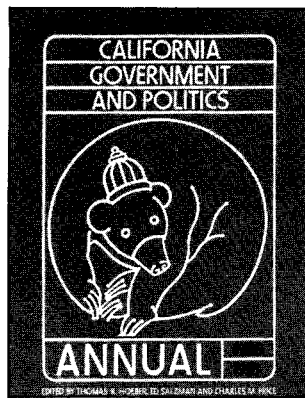
WHEN IT COMES to federal water policy and the 160-acre limit, Reagan could be expected to lend a sympathetic ear to those California growers who have been at odds with Andrus, says James Lake, Reagan's former campaign press secretary who now lobbies for the farmers in Washington. "Carter has alienated many of the western constituencies," Lake adds. "Reagan would try and bring them back."

Perhaps nothing so accurately symbolizes the perspective Reagan would bring to the Oval Office than a campaign poster that is becoming very popular in the Western states. Against a soft background of American scenes — farms, churches, cities — is a classic portrait of Reagan in a ten-gallon hat.

Leo Rennert is on vacation. David Hoffman covers Washington and Ronald Reagan for the San Jose Mercury News.



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*Leadership is the ability
to inflict pain
and get away with it.*

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